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DIVISION II  
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STATE OF WASHINGTON  
IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
BY DEPUTY  
DIVISION II

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In re the Estate of MILDRED G. JOHNSON,

Deceased.

STEVEN C. JOHNSON,

Appellant,

v.

HOPE SOLEY, as Personal Representative of the Estate of JUDY COHN,  
JOY WALTER, and CHRIS JOHNSON,

Respondents.

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BRIEF OF APPELLANT

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## **APPENDIX**

Detail Transaction Report



## I. INTRODUCTION

Without an opportunity to be heard, two judgments were entered against the former personal representative of the Estate of Mildred Johnson, Steven Johnson. There was no trial, no evidentiary hearing, and no motion for summary judgment. Instead, the trial court merely adopted findings of a Special Master and entered two judgments against Steven Johnson and his wife for \$179,836.8, in favor of the Estate, and \$90,538.95 in favor of three Estate beneficiaries.

There is no record of what the Special Master investigated, no hearing, and no transcript of any proceeding conducted by the Special Master. As such, Steven Johnson was denied the opportunity to know what the Special Master considered and denied the opportunity to challenge or review the Special Master's considerations, determinations, or findings.

Notably, no TEDRA petition was ever filed. The proceedings occurred primarily on motions to adopt recommendations of the Special Master. Upon the motion to adopt the recommendations of the Special Master, it became clear that the role of the Special Master was unclear. While his initial appointment was contemplated as a court appointed expert, his role transformed to that of a fact finder, whereby he adjudicated

the facts and the trial court wholly adopted his recommendations without further due process protections (such as an evidentiary hearing or even summary judgment motion). While the initial contemplations of the trial court, and the role of the Special Master as understood by all involved may have been well-intentioned to assist in expeditious resolution, what ultimately transpired resulted in an improper delegation of the judicial authority of the superior court.

This set the groundwork for the ultimate unraveling of these proceedings and the absence of procedural due process safe guards. As a result, this Court should reverse the entry of the judgments against Mr. Johnson, reverse the appointment of the Special Master, and remand with some instruction as to the proper role of the Special Master and allow for a hearing on the merits before the imposition of any judgment.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred when it appointed the Special Master. CP 1934-42.
2. The trial court erred when it failed to adequately identify the role of the Special Master's role. CP 1934-42.
3. The trial court erred when it entered and adopted what was deemed as "Finds and Concludes" paragraphs 2, 7, 11, 12, 14, 15, 17, 18, 20, 21, 22, and 23 in the May 23, 2014 Order. CP 1934-42.
4. The trial court erred when it entered the May 23, 2014 Order: (1) Denying Personal Representative's Motion to Approve Accounting; (2) Denying in Part Motion to Remove Personal

Representative; (3) Appointing Special Master; (4) Directing Payment of Beneficiaries' Fees and Costs; and (5) Revoking Nonintervention Powers. CP 1934-42.

5. The trial court erred when it entered what was deemed as "Finds and Concludes" paragraphs 1-18, and 20 in the November 7, 2014 Order. CP 2237-2244.
6. The trial court erred when it entered the November 7, 2014 Order. CP 2237-2244.
7. The trial court erred when it adopted the Special Master's report. CP 2237-2244.
8. The trial court erred when it removed Steven Johnson as Personal Representative. CP 2237-2244.
9. The trial court erred when it entered and amended judgments against Steven Johnson. CP 2185-87; 2230-33; 2309-11.
10. The trial court erred when it entered and amended judgments against the Steven and Gail Johnson and the marital community. CP 2234-36; 2312-14.

### **III. STATEMENT OF ISSUES ON APPEAL**

1. The trial court appointed the Special Master with the initial notion of retaining an expert for review of the Personal Representative's accounting. Ultimately, however, the Special Master's role exceeded that of an expert, and the Special Master conducted pseudo-hearings wherein the Special Master interviewed witnesses, considered exhibits, and weighed the credibility of witnesses and the evidence to make factual findings and recommendations to the court to enter conclusions of law and judgments against Mr. Johnson.

***Did the trial court err when it appointed the Special Master, failed to identify and properly limit the role of the appointed third-party investigator, and failed to give adequate instructions?*** Yes.

2. The trial court adopted the Special Master's report without any evidentiary hearing, or without any substantial opportunity for Mr. Johnson to present evidence or challenge the Special Master's report. The

adoption of the report resulted in findings of fact, conclusions of law, and entry of two judgments.

***Did the trial court err when it adopted the report of an appointed third-party investigator without conducting any additional hearing or fact-finding proceeding?*** Yes.

3. The trial court entered judgments against Mr. Johnson and the marital community despite the fact that there was no hearing before the court, there was no record of the Special Master's proceedings, there was no opportunity to examine or cross-examine any witness, including the Special Master, and there was no identified evidentiary standard in the Special Master's report.

***Did the trial court violate Appellant's right to due process and the foundational notions of an opportunity to be heard when it entered and amended judgment without an adequate hearing?*** Yes.

4. The parties opposing the Personal Representative's accounting and seeking removal of the Personal Representative were not initially successful. The trial court entered findings against Mr. Johnson and removed him as Personal Representative only after the Special Master's report. TEDRA was never invoked.

***Did the trial court err when it entered a judgment for attorney's fees and costs against Appellants for the entirety of the proceedings when TEDRA was never invoked and initial efforts to remove were unsuccessful?*** Yes.

5. No TEDRA petition was ever filed against Mr. Johnson or his marital community. All conduct Mr. Johnson performed was as Personal Representative. Mr. Johnson is a beneficiary of the Estate, and any property he would receive from the Estate is separate property.

***Did the trial court err when it entered judgment against the marital community?*** Yes.

#### IV. STATEMENT OF THE CASE

##### A. Procedural History.

On January 14, 1999, Mildred Johnson executed a will. CP 6-16. On May 7, 2003, Mildred Johnson executed a codicil to her will. *Id.* The codicil appointed Steven Johnson as personal representative with nonintervention powers and without bond. CP 13-16. The named beneficiaries were Mildred Johnson's children: Steven Johnson, Judy Cohn, Chris Johnson and Joy Walter. CP 7.

On November 3, 2009, Mildred Johnson died. CP 2. On November 20, 2009, the Petition to Probate was filed. CP 2-5. Steven Johnson<sup>1</sup> was appointed Personal Representative, consistent with the codicil, on the same day. CP 19-21.

On November 30, 2009, Mr. Johnson filed a notice to creditors, which was first published on December 1, 2009.

On June 8, 2011, Mr. Johnson completed an Interim Report, which was filed with the Court on June 10, 2011 along with an affidavit regarding preparation of an inventory of the estate. CP 31-34.

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<sup>1</sup> Steven Johnson is referred to as Mr. Johnson. Chris Johnson will be identified as C. Johnson. Mr. Johnson's wife, Mrs. Johnson, while not a beneficiary of the Estate, was named as a judgment debtor. She is referred to as Mrs. Johnson. During the course of the proceedings, Judy Cohn passed away and is represented by Hope Soley as Personal Representative of the Estate of Judy Cohn. For clarity, however, Ms. Cohn is referred to as Cohn, even after her passing, which does not affect the analysis of the issues on appeal. No disrespect to any party is intended.

On December 27, 2013, Cohn, Walter and C. Johnson filed a motion for an accounting from the Personal Representative and sought an order determining the proper distribution of Estate assets, and awarding attorneys' fees and costs. CP 170-93.

On January 27, 2014, Mr. Johnson responded (CP 605-10) and the pro tem Commissioner entered an Order that generally required: (1) the Personal Representative file a complete and certified accounting of all Estate activities; (2) the Personal Representative distribute the Estate's voting and non-voting interests in Johnson Investment Company/Forest Park Estates, LLC to all four beneficiaries; and (3) reserving attorneys' fees and costs. CP 782-86

On March 13, 2014, Mr. Johnson filed an Interim Report of Affairs of Estate and Accounting of Personal Representative. CP 787-1289. On the same day, he moved for Court approval of the accounting. CP 1290-99.

On March 21, 2014, Cohn, Walter and C. Johnson filed a motion to remove the personal representative and to appoint a successor personal representative while assessing attorneys' fees and costs against Mr. Johnson. CP 1302-326.

On May 2, 2014, both the Motion to approve the interim accounting and the motion for the removal of Mr. Johnson as Personal

Representative were heard by the trial court. RP (5/2/14, pp. 1-34). The trial court requested additional information and considered appointing a third-party. The initial purpose of the trial court's proposed appointment was envisioned as an expert who would perform an accounting to address a few of the trial court's concerns regarding some accounting of the Estate assets. RP (5/2/14 p. 31, 33). The parties were asked to come back with a proposed accountant. RP (5/2/14 p. 33). At the return hearing the trial court appointed a Special Master, former Commissioner Eric Watness. RP (5/23/14 p. 3); CP 1934-42. The trial court's May 23, 2014 Order authorized 50 hours for the Special Master to investigate the following issues:

1. "Whether Steven Johnson acted improperly in intentionally failing to give timely notice to creditors to Union Bank in relation to Seven Js shall be determined by the Special Master."
2. "Whether the Promissory Notes payable to Steven Johnson in relation to Seven Js were authorized by Seven Js shall be investigated by the Special Master."
3. "The Estate was not general partner at the time of Steven Johnson's alleged loans to Seven Js, and the Estate did not guarantee any loans from Steven Johnson to Seven Js. Whether the Estate has an obligation to repay any alleged loans from Steven Johnson to Seven Js shall be investigated by the Special Master."
4. "Steven Johnson has a conflict of interest with the Estate in the payment of \$85,096.69 from the Estate to himself in August 2012. Whether and the amount of such funds to be reimbursed by

Steven Johnson to the Estate shall be determined by the Special Master.”

5. “Steven Johnson’s actions as Personal Representative should be investigated by a Special Master, who will complete an Estate accounting, investigate Steven Johnson’s actions as personal representative, and make a recommendation to the Court regarding the amount of funds to be repaid to the Estate by Steven Johnson as a result of his breaches of fiduciary duties.”

CP 1937.

The May 23, 2014 Order also denied the Personal Representative’s Motion for approval of the interim report and accounting; and denied in part without prejudice the motion to remove Mr. Johnson as the Personal Representative. CP 1938. In that order, the trial court concluded that Mr. Johnson had breached his fiduciary duties, and entered judgments personally against Mr. Johnson for attorneys’ fees and costs. CP 1934-42. On June 13, 2014, Mr. Johnson’s motion for reconsideration was denied. CP 1943-57. CP 1995-97.

The Special Master conducted a review of the documents provided by the parties, interviewed Richard Sanders, and attorney Lamont Loo.

Specifically, the Special Master reported:

Following my appointment I met with counsel for the parties to outline the project and receive financial documents and pleadings. I have reviewed the legal pleadings in this matter as well as exhibits and declarations from the parties and their witnesses. I also conducted interviews of the principal parties to learn from them their respective points of view and to discuss the evidence they think is germane to my study. Most recently I conducted interviews of Richard Sanders, CPA for the estate as well as



Mildred Johnson during her lifetime, and Lamont Loo who was the attorney for Ms. Johnson and now for the estate. The parties were given notice of these meetings with me and have had an opportunity to participate. I have also reviewed legal documents that created and managed the various entities that are assets of the estate as well as account statements, account ledgers and reports tax records for each entity involved as well as Steven Johnson's personal redacted income tax returns.

CP 2032. No record of these interviews or any record of the evidence reviewed exists or was filed with the trial court.

On August 21, 2014, the Special Master submitted the first interim report without any substantive recommendations other than recommending a forensic accounting for an estate in which the estate owed an interest. CP 2032. The Special Master requested 20 additional hours to complete his investigation. *Id.*

On September 17, 2014, the Special Master issued its second interim report recommending the trial court enter findings on certain issues, except for those pending the forensic accounting. CP 2039-64.

On September 25, 2014, Cohn, Walter and C. Johnson moved for an order confirming and adopting the Special Master's recommendations, ruling on the Special Master's request for instructions, directing partial distribution to the beneficiaries, and entering judgment against Mr. Johnson. CP 2065-76. Mr. Johnson opposed arguing that the Special Master's interim reports were still subject to correction, clarification and

reconsideration, and that the reports purport to recommend relief based on unsubstantiated or otherwise inadmissible facts, and that the Court lacked personal and subject matter jurisdiction to grant the relief sought by the beneficiaries. CP 2094-05.

On October 3, 2014, the trial court entered an order confirming and adopting some of the Special Master's recommendations, ruling on the Special Master's request for instructions, and awarding some attorneys' fees and costs. CP 2175-84. On the same day, the trial court entered a judgment in the amount of \$48,511.15. CP 2185-87.

On October 16, 2014, the Special Master issued his report correcting, clarifying and reconsidering the second interim report of Special Master. CP 2188-96.

On October 23, 2014, Cohn, Walter and C. Johnson renewed their motion for an order confirming and adopting the Special Master's recommendations, directing partial distributions to Cohn, Walter and C. Johnson, entering judgment, and removing the personal representative. CP 2197-10.

On November 7, 2014, at the hearing on the motion of Cohn, Walter and C. Johnson, the trial court entered judgment against Mr. Johnson, made findings as recommended by the Special Master, and

removed Mr. Johnson as Personal Representative, appointing a third-party successor personal representative. CP 2230-44.

On November 17, 2014, both parties moved for reconsideration of the November 7, 2014 Order. CP 2284-02. Cohn, Walter and C. Johnson's motion was granted, and Mr. Johnson's motion was denied. CP 2303-07.

No evidentiary hearing was ever held before the trial court. No TEDRA Petition was ever filed.

**B. Facts Relating To Entry Of Judgments.**

Ultimately, two judgments are at issue. CP 2309-11; 2312-14. The judgments were amended twice to change the judgment debtors, and increase the amount of attorneys' fees awarded. One judgment is for attorneys' fees, CP 2309-11; the second judgment represents the amounts the Special Master recommended Mr. Johnson repay. CP 2312-14.

On May 23, 2014, the trial court awarded nearly all attorneys' fees and costs incurred by Cohn, Walter and C. Johnson. CP 1934-42. In total, the trial court ordered Mr. Johnson to pay \$48,511.15 within seven days of the entry of the Order. *Id.*

On October 3, 2014, the trial court entered judgment in the amount of \$48,511.15 against "Steven C. Johnson and the marital community comprised of Steven C. Johnson, husband and wife." CP 2185-87. This

judgment was first amended on November 7, 2014 to increase the judgment amount to \$90,438.95, and to change the judgment debtors to "Steven C. Johnson and Steven Johnson's 1/2 interest in the marital community comprised of Steven C. Johnson and Gail Johnson, husband and wife." CP 2230-33.

On December 29, 2014, the judgment was amended for a second time to change the judgment debtors to "Steven C. Johnson and the marital community comprised of Steven C. Johnson and Gail Johnson, husband and wife." CP 2309-11. Therefore, the judgment in effect is for \$90,438.95 against Mr. Johnson and the entirety of the marital community.

On November 7, 2014, the trial court adopted the recommendation of the Special Master and entered a separate judgment in the amount of \$179,836.89 for the benefit of the Estate. CP 2234-36. The total judgment amount is comprised of the following: (1) \$57,171.56 in amounts the Special Master found were transferred from the Estate to Seven Js and the Department of Labor and Industries; (2) \$85,096.60 in amounts the Special Master found transferred from the Estate to Mr. Johnson's account as repayment of loans; (3) \$4,000 in other expenses the Special Master found unsubstantiated; (4) \$2,925 in attorney's fees Mr. Johnson paid for legal advice related to the Estate administration; (5) prejudgment interest at 12%; (6) \$9,306.50 in attorney's fees paid by

the Estate the Special Master found Mr. Johnson benefitted from individually; (7) \$21,337.23 for the entire Special Master's fee; and (8) \$35,891.80 in attorneys' fees incurred by Cohn, Walter and C. Johnson from May 23, 2014 through October 3, 2014 previously not awarded, and \$6,036 in attorneys' fees incurred by Cohn, Walter and C. Johnson incurred from October 4, 2014 through November 7, 2014. CP 2242-43. Said judgment was initially entered against: "Steven C. Johnson individually, and Steven Johnson's 1/2 interest in the marital community comprised of Steven C. Johnson and Gail Johnson, husband and wife." CP 2234.

On December 29, 2014, the trial court amended the judgment to change the judgment debtors to "Steven C. Johnson and Gail Johnson individually, and the marital community comprised of Steven C. Johnson and Gail Johnson, husband and wife." CP 2312-14.

## **V. ARGUMENT**

### **A. The Trial Court's Orders Should Be Reviewed De Novo.**

This Court should review the decisions of the trial court de novo. The trial court took no testimony and based its decisions entirely on declarations or other written documents. "Decisions based on declarations, affidavits and written documents are reviewed de novo". *In re Estate of Bowers*, 132 Wn. App. 334, 339-40, 131 P.3d 916, 918-19 (2006).

Where “the court below did not have the opportunity to assess the credibility or weight of conflicting evidence by hearing live testimony, [appellate review] should reassess its factual findings as well as its legal conclusions de novo” *In re Estate of Nelson*, 85 Wash. 2d 602, 605, 537 P.2d 765, 768-69 (1975). “Courts have also recognized that probate proceedings are equitable in nature and reviewed de novo on the entire record.” *In re Estate of Bowers*, 132 Wn. App. At 340 (2006) (citing *In re Estate of Black*, 153 Wn.2d 152, 161, 102 P.3d 796 (2004); *In re Estate of Ney*, 183 Wash. 503, 505, 48 P.2d 924 (1935); *In re Estate of Black*, 116 Wn. App. 476, 483, 66 P.3d 670 (2003).

Findings of fact are typically reviewed by the appellate court for substantial evidence to support the findings. *Brin v. Stutzman*, 89 Wn. App. 809, 951 P.2d 291 (1998). However, in this case, as in *Estate of Black*, the entire record in this case should be reviewed de novo due to the equitable nature of a probate proceeding and that no live testimony was taken. To the extent the trial court properly entered findings of fact, which is disputed,).

While certain orders to which error is assigned, contain the language “finds and concludes” due to the fact that the entire investigation of the claims occurred by the Special Master outside the presence of the trial court, the trial court had no opportunity to weigh the evidence. To the

extent a finding of fact is mislabeled as a finding of fact are reviewed de novo because "a conclusion of law is a conclusion of law wherever it appears." *Robel v. Roundup Corp.*, 148 Wn.2d 35, 59 P.3d 611 (2002). When there are mixed findings of fact and conclusions of law, the court reviews the factual components under substantial evidence standard and the conclusions of law mistakenly characterized as findings of fact, de novo. *In re Estate of Haviland*, 162 Wn. App. 548, 255 P.3d 854 (2011).

This case was not tried. There is no record to examine for substantial evidence. Mr. Johnson could not argue that substantial evidence does not support the trial court's findings of fact because the findings of fact were made by the Special Master, and there is no record of his proceedings and this Court's review should be de novo.

**B. The Trial Court Erred By Appointing The Special Master.**

Initially, when the trial court contemplated appointing a neutral third-party to assist in review of this case, it was for hiring an accountant to review the personal representative's accounting and to assist the court in tracing funds that were allegedly transferred between Mr. Johnson, Seven J's, and the Estate. Ultimately, the Special Master that was appointed was a former Commissioner, not an accountant. As the interim reports demonstrate, his role morphed to an adjudicative role where he made determinations of fact and recommended to the trial court the

findings and conclusions that should be made, as well as the amount of a judgment to enter against Mr. Johnson.

This is more befitting of a Commissioner, not a Special Master or investigator. The question was never resolved as to under what authority the Special Master was appointed. Arguably, the appointment was under one of the following: (1) ER 706; (2) RCW 4.48.020; or (3) CR 53.3. If so, none of these statutory or court rule vehicles were properly employed. If not, the trial court improperly delegated its authority.

The trial court may have initially conceived that the Special Master would act as an ER 706 expert, but ultimately, the Special Master absorbed the role (through the way the instructions were drafted and his ultimate findings and conclusions framed as "recommendations") of a referee, or something more akin to a federal magistrate judge.<sup>2</sup> If the court's initial concept was not flawed, the execution was:

**The Court:** And then I do think that the Special Master's report would operate essentially as a kind of laying out the facts of the case, and if that would justify summary judgment, then that would justify summary judgment. To the extent that somebody has a challenge to those facts, then we potentially could have an evidentiary hearing or we could present it on the basis of affidavits. I don't know. But we expect that we want to expedite this.

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<sup>2</sup> A federal magistrate judge who makes conclusions of law and enters an order, which is approved by the court. There is no equivalent position in the Washington Superior Court.



RP (5/23/14, p. 39).

The question as to what authority the Special Master was appointed was never resolved, which in turn never resolved the issue of his role or the limits of his authority. These unanswered questions plague the case due to the unclear nature of the standards and record on appeal. Counsel for Mr. Johnson squarely raised the issue during the October 3, 2014 hearing where Cohn, Walter and C. Johnson moved to “confirm the Special Master’s recommendations which were made to the Court in his second report. . . .” RP (10/3/14, p 3). Mr. Johnson’s counsel inquired:

**Ms. Caulkins:** I have some due process concerns for a couple of reasons.

**The Court:** I was just wondering about that.

**Ms. Caulkins:** Yeah, I have huge concerns about that. If I may, I’ll address those concerns right off the bat. First of all, it would help to have some clarification as to what Commissioner Watness’ role and authority is. Is he a court-appointed expert under ER 706, which gives us the opportunity to examine and cross-examine him, not unlike a GAL in a domestic case who appears at a trial and is a witness in the case? Is he a discovery Special Master under Civil Rule 53.3? Is he a referee and, therefore, a trier of fact under RCW 4.48.020?

RP (10/3/14, p. 13).

Counsel’s concerns regarding the authority of the Special Master were never addressed. The role and the limits of authority of the Special Master were never resolved. Instead, the Special Master conducted an

“investigation” wherein he reviewed documents and interviewed witnesses, and then weighed the evidence and made recommendations to the trial court, which the trial court rubberstamped and adopted as rulings.

No Washington case, reported or unreported, has seen a Special Master employed in this fashion. The closest case is *Matter of Estate of Cooper*, in which the trial court appointed a Special Master for purposes of assisting in review of an accounting. 81 Wn. App. 79, 95, 913 P.2d 393 (1996). In *Cooper*, the court of appeals found that the trial court had committed error in the use of the Special Master because it the trial court essentially appointed an ER 706 expert who proffered an opinion, but denied Ms. Cooper discovery on that opinion. 81 Wn. App. at 96. The rulings of the case at hand are even more egregious and undoubtedly in error when compared to *Cooper*.

In *Cooper*, Mrs. Cooper died in 1978. Her will named her husband as personal representative and trustee of her testamentary trust. *Id.* at 83. In 1986, the Coopers’ daughter petitioned the court to remove Mr. Cooper as personal representative and trustee, and requested an accounting. *Id.* Mr. Cooper filed an inventory in 1989. *Id.* at 84. After issues with the accounting, the trial court appointed John Cummins, vice-president of Seattle-First National Bank and manager of its trust department, as “Special Master/referee to assist [it] in resolving various disputes that

[had] arisen in connection with [the Cooper] estate.” *Id.* at 85. Mr. Cummins reviewed the accounting prepared by Mr. Cooper, and after consulting with him the court found that the accounting had not been prepared according to accepted accounting principles. Mr. Cooper was instructed to work with Mr. Cummins to conform to those standards. *Id.* at 85. A revised accounting was filed in 1990. *Id.* The trial court refused the daughter’s request to discover the basis of the Special Master’s opinion.

After a hearing where the court took testimony, the trial court ultimately made certain rulings as to the estate and trust, awarded Mr. Cooper his personal representative fee, ordered Mr. Cooper to contribute to a portion of the losses to the accounts, and awarded the parties portions of their fees and costs. *Id.* at 86-87.

On appeal, the Coopers’ daughter challenged that the trial court improperly used the Special Master’s report as evidence and, therefore, she should have been either given the opportunity to cross-examine or otherwise challenge the report. *Id.* at 95. The court of appeals ruled:

The court’s use of Mr. Cummins’ reports and denial of discovery was error. ER 706 provides a court may appoint an expert witness with the consent of the parties. The parties also have the right to depose the expert and call him or her at trial. The court did neither. Nor did the court comply with RCW 4.84.010, which provides that parties may, by written consent, permit the court to refer issues in a civil trial to a referee. The court also did not

comply with the procedures outlined in Fed.R.Civ.P. 53...<sup>3</sup>  
Mr. Cummins was a witness and the trial court should have  
permitted discovery of his opinions and the reasons for them.  
CR 26(b)(5)(A).

81 Wn. App. at 96. The reasons why this error was harmless in *Cooper*  
are not present in this case.

In this case, the error of the trial court was even greater, and was  
not harmless. Unlike in *Cooper*, there was no trial where both sides  
presented testimony of experts. *See Id.* at 97. There was no live  
testimony, let alone cross examination of any kind. Mr. Cummins' role  
was more narrow and more of an expert than the Special Master here.  
Mr. Cummins was to examine whether the personal representative's  
accounting was in accordance with accounting principles. Here, the  
Special Master was essentially tasked to make fact findings and  
conclusions of law<sup>4</sup>, not simply to offer an expert opinion. Mr. Johnson  
had no clear opportunity to make objections to any evidence offered,  
whether that was the evidence offered to the Special Master or the court.  
Possibly the most distinguishing fact, however, is that in this case, the  
Special Master weighed the evidence and made findings, whereas in

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<sup>3</sup> This matter was decided before the adoption of CR 53.3, which is narrower than the  
Federal Rule. CR 53.3 was adopted effective September 17, 1993.

<sup>4</sup> For example, the order appointing the Special Master instructed him to examine  
"whether Steven Johnson acted improperly in intentionally failing to give timely notice to  
creditors Union Bank in relation to Seven J's. . . ." CP 1937.

*Cooper* the court weighed the evidence and considered the Special Master's report as some evidence rather than a finding to adopt. Under any conceivable method, the trial court erred in appointing a Special Master under these circumstances.

1. **The Special Master Exceeded The Role Of An Expert Under ER 706.**

The court may appoint an expert witness by its own motion. ER 706 (a).<sup>5</sup> The witness is to receive written notification of the witness' duties. *Id.* A court appointed expert may "both testify and advise the court on technical matters when the facts presented are not clear to the fact finder." *In re Welfare of Angelo H.*, 124 Wn. App. 578, 588, 102 P.3d 822 (2004); *see e.g. Delany v. Canning*, 84 Wn. App. 498, 929 P.2d 475 (1997) (the court appointed expert was properly charged with the task of re-creating the partnership accounting). Nevertheless, the court-appointed expert testimony is still governed by the rules of evidence and the expert is not unlike an expert retained by either party: the expert is a witness subject

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<sup>5</sup> The appointment of an expert witness under ER 706 is reviewed under an abuse of discretion standard. *In re Welfare of Angelo H.*, 124 Wn. App. 578, 102 P.3d 822 (2004) (citing *Students of Cal. Sch. for the Blind v. Honic*, 736 F.2d 538, 549 (9th Cir. 1984); *Walker v. Am. Home Shield Long Term Disability Plan*, 180 F.3d 1065 (9th Cir. 1999)). However, the trial court did not plainly identify the Special Master as an expert, and the report of the Special Master and the adoption of the Special Master's report was not consistent with the role of an expert and more akin to a referee or magistrate. The abuse of discretion standard should not apply to this scenario because the trial court did not follow proper procedure or clearly identify an expert witness. Nevertheless, the failure to comply with ER 706 in adopting the expert-Special Master's report without other evidence or cross-examination would be an abuse of discretion.

to cross-examination. *See e.g. In re Welfare of Angelo*, 124 Wn. App. at 589 (the qualifications of a court-appointed expert are still governed by ER 702). Such witness must provide the parties any findings, may be deposed, and may be called to testify by the court or any party. ER 706(a). **“The witness shall be subject to cross examination by each party, including a party calling the witness.”** *Id.* (emphasis added). While never plainly designated as an expert, if the appointment of the Special Master as an expert, the opinion of the Special Master violated ER 706 on two fronts: procedurally improper, and substantively an improper opinion.

First, the ER 706 procedure was plainly not followed. There was no opportunity for discovery of the Special Master’s opinion through deposition. Second, and most offensively, the trial court adopted the Special Master’s “recommendations” without any opportunity for cross-examination by either party or the court. At the October 3, 2014 hearing, the court and counsel had the following exchange which began to highlight the uncertainty:

**Ms. Caulkins:** And I suggest, though, that at the end of the day, we have the totality of the circumstances approach instead of piecemealing (sic) what Commissioner Watness’ recommendations are. Again, there has to be some mechanism for—

**The Court:** Equity.

**Ms. Caulkins:** --equity and evaluation, presentation of both disputed and undisputed facts.

**The Court:** I'm not hearing much in the way of disputed facts.

**Ms. Caulkins:** That's not the province of this argument on, you know, 20 minutes or 15 minutes a side.

**The Court:** I understand, but that's sort of the nature of what the Special Master is supposed to do, sort of cut through this thing to find the facts that matter and look at this thing. Then if there was something wrong about that, you'd have an opportunity to say, hey, he's just flat wrong about this.

**Ms. Caulkins:** That's what we are seeking guidance on. I don't know under which rule he is proceeding. Is it ER 706 –

RP (10/3/2015, 35).

That opportunity was never granted. There was never a hearing wherein Mr. Johnson could call the Special Master as a witness and cross-examine him or present other evidence.

Second, the substance of the Special Master's report exceeds an expert opinion. While designating an expert may have been appropriate, the written instructions contained in the May 23, 2014 Order charged the Special Master with a weightier task than an expert opinion. The May 23, 2014 Order appointing the Special Master asked him to make determinations of law, for example, whether Mr. Johnson was liable to reimburse the Estate. This charge called for an improper role of an expert witness, and invited the Special Master, if he were to act as an expert witness, to

not only give an opinion but to make the ultimate decision and grant relief. (This is akin to a judge, jury, and executioner approach.)

Expert opinions that consist solely of legal conclusions are not admissible under the rules of evidence. *Stenger v. State*, 104 Wn. App. 393, 16 P.3d 655 (2001) (deposition testimony offered in response to summary judgment primarily consisted of opinion as to the State agency's obligations under state and federal law and whether the agency satisfied these obligations); *Orion Corp. v. State*, 103 Wn.2d 441, 693 P.2d 1369 (1985). "Experts may not offer opinions of law in the guise of expert testimony." *Stenger*, 104 Wn. App. at 407. An improper legal conclusion is one that the expert testifies as to the law which applies to the case or that the defendant's conduct violated a particular law. *State v. Olmedo*, 112 Wn. App. 525, 49 P.3d 960 (2002).

The Special Master's report is riddled with improper legal conclusions that cannot constitute an admissible expert opinion. For example, the Special Master "opined," "Promissory Notes created by Steven Johnson and payable to him by Seven J's were executed without authority of the probate estate and should be considered uncollectable against any assets other than those of Seven J's;" and "Steven Johnson without legal authority transferred \$57,000 in funds from the probate



estate account. . .” CP 2043. Whether a personal representative acted properly or improperly is a legal conclusion for the trial court to make.

Even still, an expert opinion should be *some* of the evidence considered by the trial court. Even if the Special Master’s opinion was a proper expert opinion, it should not have been accepted *carte blanche* without consideration of other evidence during a proper proceeding to weigh the evidence and credibility.

2. **Appointment And Procedure Under RCW 4.48.010 et seq. Was Improper.**

The Special Master acted like a referee. He interviewed witnesses,<sup>6</sup> considered documents as evidence, weighed evidence and made factual findings. The court then entered judgment based upon his report. This procedure closely mirrors the filing of a report of a referee and the court’s entry of judgment thereon set forth in RCW 4.48.070.

Like the analysis under ER 706, the appointment of the Special Master as a referee, if that was the role he was to play, is fraught with procedural and substantive issues.

A trial by referee may occur under certain circumstances governed by Chapter 4.48 RCW. Trial before a referee may occur with the parties’

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<sup>6</sup> It is important that the Special Master identified that he “interviewed” witnesses. He did not examine them under oath.

consent, RCW 4.48.010, or without consent, RCW 4.48.020. Reference by consent requires written consent of all parties filed with the court. RCW 4.48.010. Reference without consent may be made by the court upon application of either party. RCW 4.48.020.

A trial by reference still maintains the formalities of a trial:

Subject to the limitations and directions prescribed in the order of reference, the trial conducted by a referee shall be conducted in the same manner as a trial by the court. Unless waived in whole or in part, the referee shall apply the rules of pleading, practice, procedure, and evidence used in the superior courts of this state. The referee shall have the same power to grant adjournments, administer oaths, preserve order, punish all violations thereof upon such trial, compel the attendance of witnesses, and to punish them for nonattendance or refusal to be sworn or testify, as is possessed by the court.

RCW 4.48.060(1) (emphasis added). The trial must be on the record. The referee must file a report with findings of fact and conclusions of law within *20 days after the conclusion of the trial*. *Barnett v. Hicks*, 119 Wn.2d 151, 829 P.2d 1087 (1992) (citing RCWs 4.48.070, 4.48.080). The referee must file the evidence received and rejected. RCW 4.48.070.

Nothing about the proceedings before the Special Master complied with RCW 4.48.010 *et seq.* There was no formality of the pleadings, examination of witnesses, or adherence to the rules of evidence. There was no record. Nothing demonstrates that anything the Special Master heard from witnesses was pursuant to a sworn statement. The Special

Master's report merely states that he "conducted interviews of the principal parties to learn from them their respective points of view and to discuss the evidence they think is germane to my study." CP2032, 2040. This procedure is patently not "in the same manner as a trial by the court."

The absence of the protections of a trial proceeding before the referee infringes on Mr. Johnson's right to a trial and right to adequate appellate review, as discussed below. The findings of fact and conclusions of law based upon a record of a trial by referee are the basis of the review to the Court of Appeals. *Barnett*, 119 Wn.2d at 268; RCW 4.48.120(2); RAP 2.2(a)(1). Given that the trial court did not properly appoint the Special Master as a referee, and the proceedings were improper, any appointment of the Special Master as referee was in error.

3. **The Special Master's Investigation And Recommendations Exceeded The Scope Of A Discovery Special Master Appointed Under CR 53.3.**

The final contemplated authority for the appointment of the Special Master in this case is CR 53.3. Unlike the federal rule, Washington Court Rules limit the powers of a Special Master to discovery matters.<sup>7</sup> Under CR 53.3(a) the court may appoint a "Special Master

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<sup>7</sup> Compare FRCP 53(c): Master's Authority (1) In General. Unless the appointing order directs otherwise, a master may: (A) regulate all proceedings; (B) take all appropriate measures to perform the assigned duties fairly and efficiently; and (C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

either to preside at depositions or adjudicate discovery disputes, or both.”

The powers of the Special Master outlined in CR 53.3(d) identify the powers of the Special Master consistent with the purpose of the appointment, to resolve issues of discovery.

Here, apart from using the term “Special Master,” nothing of the Special Master’s role was limited to discovery. In fact, there were no issues of discovery, and instead the Special Master was charged with making factual findings and conclusions of law. If the trial court appointed the Special Master under CR 53.3, the scope of these instructions and the manner in which the Special Master operated and conducted the proceedings was far too expansive. It was an error to appoint the Special Master for the purpose the trial court ordered if he was appointed under CR 53.3.

**C. The Trial Court Improperly Delegated Its Judicial Authority.**

Article 4, Section 1 of the Washington Constitution vests judicial power in the superior court: “The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.”

By instructing the Special Master to make findings of fact and conclusions of law, the trial court essentially delegated the judicial authority to the Special Master without statutory or other constitutional

basis to do so. As discussed above, this delegation of authority could have been accomplished by RCW 4.48.010 *et seq.*, but was not.

Adopting the recommendations of the Special Master was the final manifestation of the trial court's improper delegation of judicial authority. Undisputedly, the Special Master weighed the evidence when he reported, "while also acting to protect the other three Beneficiaries interest in the residual estate, Steven Johnson's actions were not completely selfless," (CP 2193), or "This explanation is, frankly, not credible and the amount is sufficiently large to warrant better substantiation." CP 2056. The Special Master clearly made a conclusion as if he were the trial court when stating, "Mr. Johnson *shall* reimburse the estate for this amount." CP 2056. (emphasis added). These types of findings and an order such as "shall," which is later adopted and imposed through judgment entered by the trial court, is an improper delegation of judicial authority.

Another example of the harm created by this delegation comes from the final total of the judgment amounts. Early in the discussions of the appointment of the Special Master, the trial court repeatedly acknowledged that equity may reduce the amount that Mr. Johnson would be ordered to repay, if ordered to repay at all. *See e.g.* RP (5/2/14, p. 24-25, 26:20-21). The Special Master, however, did not make such an equitable offset. By foreclosing the opportunity of Mr. Johnson to present

evidence to the trial court, the trial court simply adopted the Special Master's determination without any measure of equity.

**D. The Trial Court Violated Mr. Johnson's Constitutional Rights When It Rubber Stamped The "Recommendations" Of The Special Master.**

The trial court adopted the Special Master's report and "recommendations" verbatim as findings and conclusions without any hearing before imposing judgment in the amount the Special Master recommended. This violated Mr. Johnson's procedural due process rights because there was no opportunity to be heard, no record of the proceedings, no ability to examine witnesses, and no evidentiary standard applied.

**1. The Procedure Lacked An Opportunity To Be Heard.**

The absence of a hearing violated Mr. Johnson's procedural due process rights. Even in civil matters between two private parties, the right to due process is still protected. *See e.g. Leda v. Whisnand*, 150 Wn. App. 69, 207 P.3d 468 (2009); *see also Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App. 245, 63 P.3d 1968 (2003) (class members have a due process right to be protected in class certification under CR 23(b)(1) or CR 23(b)(2) unless monetary damages are merely incidental to the primary claim). Due process affords the opportunity to be heard:

The Fourteenth Amendment of the United States Constitution provides that no state shall 'deprive any person of life, liberty or property, without due process of law. . . .' The Washington Constitution contains an identical clause. Procedural due process in Washington requires a meaningful opportunity to be heard. *Olympic Forest Prods., Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 421, 511 P.2d 1002 (1973) (citing *Boddie v. Connecticut*, 401 U.S. 371, 377, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971)). The scope of due process involves a balancing of 'the private interest to be protected, the risk of erroneous deprivation of that interest by governmental procedure, and the government's interest in maintaining such a procedure.' *Krein v. Nordstrom*, 80 Wn. App. 306, 310, 908 P.2d 889 (1995) (citing *Soundgarden v. Eikenberry*, 123 Wash.2d 750, 768, 871 P.2d 1050 (1994)).

*Carlstrom v. Hanline*, 98 Wn. App. 780, 790, 990 P.2d 986, 991 (2000)

(emphasis added). A "meaningful opportunity to be heard" is a minimum requirement. *Leda*, 150 Wn. App. at 83. The *Leda* court held that the government's interest in efficient show cause hearings did not outweigh the rights to a meaningful opportunity to be heard.

Mr. Johnson had no meaningful opportunity to be heard. The trial court adopted findings of fact and conclusions of law and entered a judgment based upon affidavits, and adopted the Special Master's report. This was not a meaningful hearing where Mr. Johnson could present alternative evidence or cross-examine the Special Master to inquire as to the basis for his findings. The rubberstamp of the Special Master's investigation, when clearly there was no formality in the proceedings,

violated Mr. Johnson's right to due process before the court takes action against him like entering a judgment.

**2. The Procedure Created No Record Of The Proceedings.**

Superior courts are courts of record. RCW 2.08.030. A "court of record" is defined as "a court that is required to keep a record of its proceedings, and that may fine or imprison." *State ex rel. Henderson v. Woods*, 72 Wn. App. 544, 865 P.2d 33 (1994) (citing Black's Law Dictionary 319 (5th rev. ed. 1979) (disapproved upon other grounds). "[W]hile the method of recording hearings may change, there must be an adequate record." *Id.* at 550. The appellate court may remand a case for a new trial where the trial court's report of proceedings is inadequate.

No report of proceedings must surely meet the standard for "inadequate." There is no record of the proceedings that resulted in the fact-finding that was adopted by the trial court. The Special Master "conducted interviews of the principal parties. . ." in reaching his conclusions. This is not in accordance with a court of record. The Special Master did not ensure a formal proceeding where Mr. Johnson, the party against whom the trial court was contemplating entering judgment, was present or was afforded the opportunity to cross examine or challenge. There is no record to show exactly what document the Special Master considered in making his findings (no evidentiary record or exhibit list as



if this were a trial). There is no report of proceedings to record the testimony of any witness.

The absence of a record, in itself, leads to an infringement of a constitutional right. *State v. Larson*, 62 Wn.2d 64, 381 P.2d 120 (1963) (to satisfy due process, there must be a record of "sufficient completeness" for a review of the errors raised by the defendant in a criminal case). "[W]hen an adequate record exists, the appellate court may carry out its long-standing duty to assure constitutionally adequate trials by engaging in review of manifest constitutional errors raised for the first time on appeal." *State v. Contreras*, 92 Wn. App. 307, 313, 966 P.2d 915 (1998); see also *Bulzomi v. Dep't of Labor & Indus.*, 72 Wn. App 522, 864 P.2d 996 (1994) (an insufficient record on appeal precludes review of the alleged errors). The absence of a clear record is a fatal defect. *Beach v. Board of Adjustment of Snohomish Cnty.*, 73 Wn.2d 343, 438 P.2d 617 (1968) (citing *Crouch v. Ross*, 83 Wash. 73, 145 P. 87 (1914)).

Here, there is no adequate record of proceedings for the appellate court to review because the proceedings essentially occurred before the delegated fact-finder, the Special Master. Therefore, Mr. Johnson is procedurally and substantially precluded from designating a record of what the Special Master considered. The lack of any transcript, log of evidence considered by the fact-finder, or other information, other than a

statement that the parties were interviewed and the evidence they felt was most “germane” was considered, offends the basic notions of the right to a trial and a hearing on the record. The absence of any record of these proceedings, which ultimately resulted in the findings the Court entered, infringes on Mr. Johnson’s constitutional rights.

3. **Mr. Johnson Had No Opportunity To Examine Witnesses.**

Apart from the error regarding the opportunity to examine an ER 706 witness, the procedure of this case foreclosed Mr. Johnson’s opportunity to adequately cross-examine the other witnesses who offered statements to the ultimate fact-finder, the Special Master. In a proceeding to remove a dog owner’s dog, the Board rules allowing the right to counsel, offering witnesses and evidence, and examining and cross-examining witnesses was proper. *Mansour v. King Cnty*, 131 Wn. App. 255, 269, 128 P.3d 1241 (2006). The failure to adhere to those rules, however, was a prejudice to the appellant’s case. *Id.* at 269. The court noted, even a person disputing a minor civil infraction like a parking ticket has the right to subpoena witnesses. *Id.* Mr. Johnson had no such opportunity. The trial court erred by failing to conduct an evidentiary hearing.

4. **The Special Master Never Identified Or Properly Applied Any Evidentiary Standard.**

There is nothing in the Special Master's report to demonstrate that he applied even the lowest acceptable standard of proof. In civil cases between private litigants, the burden of proof is the preponderance of evidence. *Nguyen v. State, Department of Health Medical Quality Assurance Commission*, 144 Wn.2d 516, 29 P.3d 689 (2001) (citing *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)). Given that there is no record to review the evidence the Special Master considered, it is unknown whether he applied a "preponderance of the evidence" standard, or something lower. Taken to its logical conclusion, without a record of the evidence weighed, a finding of fact could have been entered on a "gut feeling," hunch or assumption. The absence of the record or identified evidentiary standard leads to a violation of even the lowest constitutional evidentiary standards of proof.

E. **The Trial Court Improperly Concluded That Mr. Johnson Had Breached A Fiduciary Duty.**

In the May 23, 2014 Order, the trial court found that Mr. Johnson breached a fiduciary duty, declined to remove him as personal representative, and appointed a Special Master to investigate facts that would have been the basis for a finding of the breach of fiduciary duty.

A personal representative of an estate has a fiduciary relationship with the estate's beneficiaries and owes a duty to act in their best interest. *In re Estate of Larson*, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985). The compensatory damages available to a beneficiary are equitable in nature. *Gillespie v. Seattle—First Nat'l. Bank*, 70 Wn. App. 150, 173, 855 P.2d 680 (1993), *review denied*, 123 Wn.2d 1012 (1994). To bring a damages action for breach of fiduciary duties, a beneficiary must show (1) a fiduciary relationship giving rise to a duty of care, (2) an act or omission by the fiduciary in breach of the standard of care, (3) damages sustained by the beneficiary; and (4) that the fiduciary's breach of the standard of care proximately caused the damages. *See In re Estate of Ehlers*, 80 Wn. App. 751, 911 P.2d 1017 (1996)(personal representatives owe a fiduciary duty that must conform to the laws governing trustees); 29 David K. DeWolf, Wash. Prac. § 12:1, (2014).

Cohn, Walter and C. Johnson made the argument that Mr. Johnson breached fiduciary duties. That argument was adopted at some point and made its way making its way into the May 23, 2014 Order and has since reared its head at every turn. CP 1938. The problem, however, is that the trial court appointed the Special Master to conduct an investigation into whether Mr. Johnson engaged in an improper conduct that would have

breached the fiduciary relationship owed to the beneficiaries. The trial court did not remove Mr. Johnson on May 23, 2014 as requested.

The trial court's error is self-apparent when considering that in the same Order, the trial court appoints an independent third-party to conduct an investigation, but also makes a finding that Mr. Johnson breached a fiduciary duty. This is underscored by the fact that this finding and conclusion was made without any hearing or other procedural ability to defend against this claim except for the affidavits submitted in opposition to removal of the Personal Representative and in support of approving the accounting. In essence, this improper preliminary advisory opinion stacked the future deck against Mr. Johnson.

**F. The Trial Court Erred When it Removed Mr. Johnson as Personal Representative.**

Mr. Johnson was removed as Personal Representative when the trial court adopted the Special Master's findings. CP 2244. RCW 11.68.070 underscores the error in this Order, given that the statute requires a hearing before removal:

If any personal representative who has been granted nonintervention powers fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, the

court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 .

RCW 11.68.070. There was no hearing before the trial court to remove Mr. Johnson. The trial court did not properly exercise its discretion when it failed to hold such hearing.

**G. There Was No Invocation Of TEDRA.**

11.96A.090 sets forth when a judicial proceedings under the Trust and Estates Dispute Resolution Act ("TEDRA") may proceed.

(1) A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules.

**(2) A judicial proceeding under this title must be commenced as a new action.**

(3) Once commenced, the action may be consolidated with an existing proceeding upon the motion of a party for good cause shown, or by the court on its own motion.

...

It is anticipated that Respondents will argue that the trial court had broad authority to navigate these proceedings and had discretion to employ the Special Master for the means necessary or appropriate to resolve trust or estate disputes under TEDRA. However, no party ever initiated a TEDRA proceeding and there is no TEDRA petition. To invoke the authority and powers of TEDRA, a party must initiate a judicial

proceeding through a new action pursuant to RCW 11.96A.090. Because this was never done, TEDRA does not apply to this case. Had the TEDRA been invoked, the trial court could have ordered mediation (RCW 11.96A.300) or arbitration (RCW 11.96A.310), but no TEDRA provision allows for a Special Master as utilized here.

**H. The Trial Court Erred When It Entered A Judgment Against Mr. Johnson In Favor Of The Estate.**

The judgment entered against Mr. Johnson individually, Mrs. Johnson individually, and the marital community was entered in favor of the Estate based solely upon the recommendations of the Special Master.<sup>8</sup> The November 7, 2014 Order directly adopted the money judgment amounts recommended by the Special Master without any modification or adjustment. CP 2237-44.

For the reasons set forth above, it was improper to simply adopt the Special Master's report and enter judgment based upon those "recommendations." Further, by doing this, the trial court failed to exercise any discretion that it had previously contemplated. Even if the trial court properly adopted the Special Master's report as the basis to enter judgments, the amount should have been reduced by the trial court's

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<sup>8</sup> See below. It was wholly improper to enter judgment against Mrs. Johnson individually in favor of the Estate.

exercise of discretion.<sup>9</sup> For example, the trial court contemplated that “we should give him some pass for a few months. It is not a factual analysis. I’m guessing that when everything gets shaken out, maybe it would be fairly attributed back to Mr. Johnson.” RP (5/2/14, p. 30). Later the court stated, “As I say, I indicated there was, I thought, a window of time when it may have been appropriate for parties to contribute to this thing, and that might have implied some obligation on the part of the estate to do so as well. I don’t know. Maybe not. At the moment, I’m not willing to find that...” RP (5/23/14 p. 4).

The trial court clearly contemplated exercising some equitable principals after having the opportunity to weigh the evidence. Since the trial court never weighed the evidence it was improper to rubber stamp the Special Master’s report by entering a judgment for the full amount.

**I. No Authority Supports A Judgment For Attorneys’ Fees And Costs Against Mr. Johnson.**

Attorneys’ fees were awarded three times: (1) in the May 23, 2014 Order appointing the Special Master, (2) in the October 3, 2014 Order adopting the Special Master’s recommendations, and (3) the November 7, 2014 Order removing Mr. Johnson as personal representative.

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<sup>9</sup> Inherently, this demonstrates the problem with the use of the Special Master in this case because the trial court never heard the evidence which would have allowed it to exercise discretion.



No authority cited by Cohn, Walter or C. Johnson support the attorneys' fees as awarded by the trial court. The trial court awarded nearly all of the attorneys' fees incurred without delineating which authority it was relying upon for such award. Cohn, Walter and C. Johnson requested attorneys' fees under three different authorities throughout the proceedings: RCWs 11.68.070, 11.76.070, and 11.96A.150. *See* CP 1323-25; RP (6/13/14, p. 10); RP (11/7/14 p.6). Notably, RCW 11.96A.150 cannot have applied. As stated above, TEDRA was never invoked, thus the attorney's fees of that statutory chapter would not apply. Moreover, the trial court should not have awarded attorneys' under RCWs 11.68.070 and 11.76.070.

An award under RCW 11.68.070 was improper because the Special Master's recommendations were the basis for the removal. Cohn, Walter and C. Johnson were not initially successful on the removal of Mr. Johnson as Personal Representative as sought in the May 23, 2014 Order. Instead, the trial court appointed the Special Master. Mr. Johnson was only removed as Personal Representative upon the report of the Special Master.

Similarly, RCW 11.76.070 is improper because the only findings of an erroneous account or report came after the improper adoption of the Special Master's findings. The initial opposition regarding the accounting

resulted in the appointment of the Special Master. Findings of issues with the Personal Representative's accounting was the result of the erroneous Special Master report.

**J. The Attorneys' Fees And Costs Awarded Were Unreasonable.**

The trial court erred by awarding the entirety all of the fees requested by Cohn, Walter and C. Johnson, which are unreasonable. Where authorized by contract, statute or rule, an award of attorney's fees must be reasonable. *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 535, 79 P.3d 1154 (2003). Generally, Washington courts calculate reasonable attorney fees based on the lodestar method. *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 272 P.3d 827 (2012). The lodestar method requires the court to examine whether counsel spent a reasonable number of hours excluding any wasteful or duplicative hours, and any hours pertaining to unsuccessful claims, and whether counsel billed at a reasonable rate. *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 54 P.3d 665 (2002).

In our case, the trial court abused its discretion when it awarded all attorneys' fees requested, without examining whether the fees were reasonable, awarding fees that were not incurred for a successful motion, and ignoring that fees were requested pursuant to TEDRA, which was inapplicable. *See Estate of Larson*, 103 Wn.2d at 521; *In re Estate of*

*Marks*, 91 Wn. App. 325, 337, 957 P.2d 235 (1998) (will contestant was not awarded attorneys' fees under RCW 11.68.070 when the removal of the personal representative was based upon acts taken by him regarding the will's preparation, not the acts undertaken as personal representative).

The trial court made no examination of whether the attorneys' fees requested were related to the motion to remove the personal representative or some other activity. For example, the trial court awarded attorneys' fees incurred to research property managers. CP 1331. The only fees that should have been awarded under RCW 11.68.070 should have been those fees directly related to the effort to remove the Personal Representative, and nothing further. The trial court abused its discretion by failing to examine whether the attorneys' fees sought under RCW 11.68.070 included unrecoverable attorneys' fees.

By similar analysis, the attorneys' fees awarded under RCW 11.76.070 should have been limited to those fees incurred in opposing the Personal Representative's accounting or report.

The time billed by attorneys was not reasonable. By way of example, and not demonstrative of every unreasonable fee requested, the following fees that were requested and awarded were unreasonable:

- \$3,016 billed by counsel from April 18, 2014 to April 30, 2014, (10.4 hours) to prepare for oral argument when counsel drafted both the motion and the reply. CP 1910.

- \$4,252.50 billed by counsel from May 5, 2014 to May 8, 2014 (16.5 hours) to prepare supplemental briefing on issues related to original motion. CP 1911.
- \$13,998 billed by counsel (48.9 hours) regarding drafting the motion for an accounting and opposing the accounting, which represents work performed in December 2013 (16.1 hours), March 2014 (5.6 hours) and from March 28-April 10, 2014 (26.1 hours). CP 1330, 1331, 1818, 1819.
- \$7,226 billed by counsel (25.6 hours) relating to motion to remove Mr. Johnson as personal representative for the March 17 through March 21, 2014. CP 1331, 1818. This involves similar arguments as those presented in the motion for an accounting and the opposition to Mr. Johnson's accounting.
- \$16,230.50 billed by counsel (56.7 hours) relating to the initial motion to adopt the Special Master's report, and the renewed motion to adopt the Special Master's report. CP 2092, 2280, 2281.

Based on the limited review above, at least 158.1 hours are questionable and should be examined, totaling \$44,723.00 billed by attorneys. See Appendix. As such, these fees were incurred for five different issues, and do not include teleconferences, meetings, or travel. The trial court abused its discretion by making no inquiry at all into the reasonableness of these fees. Notably, many of the issues that appeared in the primary three motions (accounting, removal of personal representative, and confirmation of the Special Master's reports) were nearly identical. At times, the briefing recycled prior arguments. For example, two motions were filed to confirm the Special Master's reports, which undoubtedly was duplicative. In fact, the proposed orders were nearly

identical, yet 4 hours was spent drafting the second proposed order.

CP 2281.

Additionally, the time billed by non-attorney staff was unreasonable, and included time spent performing administrative tasks.<sup>10</sup> For example, on December 27, 2013, a non-attorney staff person billed 5 hours for e-filing, preparing working copies and delivery of documents to opposing counsel for \$975. CP 1330. Before awarding fees for non-lawyer personnel, the court must consider the following criteria:

(1) the services performed by the non-lawyer personnel must be legal in nature; (2) the performance of these services must be supervised by an attorney; (3) the qualifications of the person performing the services must be specified in the request for fees in sufficient detail to demonstrate that the person is qualified by virtue of education, training, or work experience to perform substantive legal work; (4) the nature of the services performed must be specified in the request for fees in order to allow the reviewing court to determine that the services performed were legal rather than clerical; (5) as with attorney time, the amount of time expended must be set forth and must be reasonable; and (6) the amount charged must reflect reasonable community standards for charges by that category of personnel.

*Absher Const. Co. v. Kent School Dist. No. 415*, 79 Wn. App. 841, 917

P.2d 1086 (1995). The trial court failed to consider this criteria when it awarded fees for non-attorney personnel, which abused its discretion.

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<sup>10</sup> Counsel for Cohn, Walter and C. Johnson also billed at attorney rates for non-attorney administrative tasks, such as .3 hours at \$290 an hour for confirming working copy submission. CP 1910.

In addition, the trial court abused its discretion by failing to examine the reasonableness of the following, which totals \$7,140.50 in unreasonable non-attorney billing:

- \$2,535.00 in fees incurred on May 27-28, 2014 by a non-attorney staff person (13 hours) in assembling, organizing, and arranging delivery of binders to the Special Master. CP 2087-2093.
- \$2,193.00 in fees incurred on July 14-18, 2014 by a non-attorney staff person (10.7 hours) in creating a spreadsheet that duplicated information in bank statements provided to the Special Master. CP 2087-2093.
- \$840.50 in fees incurred on July 11, July 21, and August 15 by a non-attorney staff person (4.1 hours) in scanning and transmitting documents to the Beneficiaries or the Special Master. CP 2088.
- \$512.50 in fees incurred on August 20, 2014 by a non-attorney staff person (2.5 hours) in conferring with counsel in the same office and listening in on a conference call with opposing counsel and the Special Master. Counsel for Cohn, Walter and C. Johnson participated in and billed for the same call. CP 2087-2093.
- \$75.00 in fees incurred on June 12, 2014 by a non-attorney staff person (.5 hours) in downloading bank statements and saving them to a zip drive. CP 2087-2093.
- \$602.50 in fees incurred by non-attorney staff personnel (4.8 hours) between July 23, 2014 and September 15, 2014 in speaking with counsel in her office, reviewing counsel's work, e-filing documents, reviewing the court docket, transmitting working copies, and preparing a hearing binder. CP 2088.
- \$102.00 in fees incurred on October 20, 2014 by a non-attorney staff person to confer with counsel in her office and review a motion she prepared. CP 2213.

These items are indicative of the types of billing practices employed, and not intended to conclusively identify all unreasonable fees that were awarded. By failing to conduct any inquiry into the

reasonableness of the fees, the trial court erred. If this Court does not reverse the fee award in full, this Court should remand for examination as to the reasonableness of the fees requested.

**K. The Trial Court Erred When It Entered Any Judgment Against Gail Johnson And The Marital Community.**

No TEDRA petition was filed to invoke the jurisdiction of the Court with regard to Mrs. Johnson individually and the community. The Special Master's report and the trial court's orders repeatedly refer to the conduct of Steve and Gail Johnson. As a result, the judgments entered by the trial court were entered against Steve and Gail Johnson individually and the marital community.<sup>11</sup> This was in error.

No party ever invoked the jurisdiction of the court as to the marital community of Mr. Johnson, Mrs. Johnson individually, or her interest in the marital community.

At the trial court, Cohn, Walter and C. Johnson relied on the theory that the marital community could not escape the liability of a tort, even though neither Mr. Johnson nor Mrs. Johnson were named as respondents to a TEDRA petition, or defendants in any civil action. *See* CP 2151 where it was cited, "Numerous sections in the probate code expressly grant this Court the power to enter a judgment against Johnson's marital

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<sup>11</sup> The judgment in favor of the Estate was entered against Steve and Mrs. Johnson both individually.

community...” The code provisions that were cited were principally RCW 11.96 (which has been repealed) and RCW 11.96A (which does not apply). The trial court simply entered judgment based upon conduct performed while Mr. Johnson acted as Personal Representative. Without the TEDRA petition, or some other initiation of a suit against Mr. Johnson personally there was no jurisdiction over the parties such that the trial court could enter judgment against them.

Unlike the cases where the court did impose liability on the marital community, the lack of any precipitating action against Mr. Johnson individually is instructive. Mr. Johnson was never sued. He was in the position because he was a named personal representative. *Compare Clayton v. Wilson*, 168 Wn.2d 57, 227 P.3d 278 (2010) (the husband was sued after sexually assaulting a boy who was being paid by the marital community to perform yard work); *LaFromboise v. Schmidt*, 42 Wn.2d 198, 254 P.2d 485 (1953) (the husband was sued after he took indecent liberties with a six year old boy who had been placed with pay with the defendant and his spouse); *State v. WWJ Corp.*, 138 Wn.2d 595, 980 P.2d 1257 (1999) (mortgage broker was party to lawsuit that precipitated fines and penalties imposed upon the marital community).

In addition, Cohn, Walter, and C. Johnson rely primarily on *In re Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) for the proposition that the trial



court had jurisdiction over Mr. Johnson individually, Mrs. Johnson individually, and the marital community. However, under these facts, that case is inapposite for that proposition. Unlike in *Jones*, there was no TEDRA petition ever filed. There was no triggering petition to invoke the court's jurisdiction over the non-parties to the Estate. The uniqueness of a probate proceeding, from a procedural standpoint, as compared to a standard civil lawsuit, is that a personal representative may face liability, despite the lack of a lawsuit against him. This exposure to liability should be inherently limited because of the lack of an initiated suit.

Without a TEDRA petition, there should be no extension of liability to the marital community and especially not the spouse of the personal representative in the individual capacity. The trial court erred by entering judgment upon any party other than Mr. Johnson individually.

**L. Mr. Johnson Should Be Awarded Attorneys' Fees On Appeal.**

Mr. Johnson requests attorneys' fees and costs pursuant to RAPs 18.1, 14.2, and 14.3. A party is entitled to attorneys' fees on appeal if the requesting party demonstrates entitlement to fees under applicable law.

*Buck Mountain Owner's Ass'n v. Prestwich*, 174 Wn. App. 702, 308 P.3d 644 (2013). RCW 11.68.070 authorizes an award of attorney's fees to a Personal Representative who successfully defends in a motion to remove the Personal Representative. Mr. Johnson was not removed by motion in


front of the trial court, but only on the recommendation of the Special Master, which, as discussed above was improper and should be remanded. Mr. Johnson should be awarded his attorney fees on appeal.

## **VI. CONCLUSION**

While the trial court may have appointed the Special Master with good intentions, the lack of procedural clarity ultimately created a violation of due process. For the reasons set forth herein, Appellant respectfully requests that this Court vacate the two judgments entered; remand to the trial court with instruction to reinstate Mr. Johnson as Personal Representative, further proceedings with proper procedure; and to award Mr. Johnsons' attorney's fees below and on appeal.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of July, 2015.

SMITH ALLING, P.S.

By   
Russell A. Knight, WSBA #40614  
Morgan K. Edrington, WSBA #46388  
Attorneys for Appellant

## CERTIFICATE OF SERVICE

Pursuant to the laws of the State of Washington, the undersigned certifies under penalty of perjury that a true and correct copy of the foregoing document was forwarded by e-mail this 17<sup>th</sup> day of July, 2015, to the following:

Rachel L. Merrill  
Hanson Baker Ludlow Drumheller, P.S.  
2229 112<sup>th</sup> Ave. NE, Suite 200  
Bellevue, WA 98004  
rmerrill@hansonbaker.com  
Attorneys for Beneficiaries

David B. Petrich  
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Attorneys for Guardianship Services of Seattle

and hand delivered to:

Washington State Court of Appeals  
Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402



JULIE PEREZ, Legal Assistant

# APPENDIX

Date: 03/21/2014

Detail Transaction File List  
Hanson Baker Ludlow Drumheller P.S.

Page: 1

Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
13037.001	11/22/2013	35	A	9	280.00	3.10	868.00	Review correspondence regarding accounting from L. Loo; review issues related to payments to S. Johnson; e-mail to clients regarding same; updates to Motion for Accounting. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	11/26/2013	35	A	12	280.00	0.30	84.00	Review case schedule regarding deadlines in Mildred Johnson estate. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/02/2013	35	A	30	280.00	0.10	28.00	E-mails to clients regarding status. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/03/2013	35	A	30	280.00	1.00	280.00	Work on updating motion for accounting. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/04/2013	35	A	30	280.00	1.60	448.00	Continue work on updating motion for accounting and supporting documents. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/06/2013	35	A	30	280.00	0.10	28.00	E-mails to and from clients. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/13/2013	35	A	30	280.00	2.40	672.00	Work on Motion for accounting; conference with clients regarding same. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/16/2013	35	A	30	280.00	2.00	560.00	Edits to declarations in support of Motion for Accounting. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/17/2013	35	A	30	280.00	1.90	532.00	Continue work on Motion for Accounting documents. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/18/2013	5	A	4	325.00	0.70	227.50	Review and edit Motion regarding Accounting. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/18/2013	35	A	30	280.00	2.20	616.00	Continued work on Motion for Accounting and supporting documents; draft proposed order. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/19/2013	35	A	8	280.00	2.60	728.00	Research regarding accounting and attorney fees statutes and cases; e-mails to clients regarding drafts. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/20/2013	35	A	30	280.00	0.60	168.00	Edit Declaration of H. Soley per emails. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/23/2013	12	A	1	195.00	0.30	58.50	Conference with R. Merrill; begin preparing documents for filing. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/23/2013	35	A	30	280.00	1.20	336.00	Compile exhibits for R. Merrill declaration; edit proposed order. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/27/2013	12	A	1	195.00	5.00	975.00	Conference with R. Merrill; prepare all documents for e-filing with Pierce County Superior Court, and complete e-filing; prepare working copies for ex parte; prepare packet for L. Loo; arrange for delivery of packets. Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	12/27/2013	35	A	30	280.00	1.10	308.00	Final edits to pleadings; coordinate filing. Soley/Hope Estate of Mildred Johnson	ARCH

Date: 03/21/2014

Detail Transaction File List  
Hanson Baker Ludlow Drumheller P.S.

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Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
13037.001	02/26/2014	35	A	12	290.00	0.30	87.00	Estate of Mildred Johnson Review and respond to e-mail regarding order directives. Soley/Hope	ARCH
13037.001	03/06/2014	35	P	30	290.00	0.90	261.00	Estate of Mildred Johnson Begin work on research for motion. Soley/Hope	97
13037.001	03/07/2014	35	P	1	290.00	0.20	58.00	Estate of Mildred Johnson Telephone conference with T. McLeod regarding scheduling; email clients regarding same. Soley/Hope	98
13037.001	03/11/2014	35	P	30	290.00	1.10	319.00	Estate of Mildred Johnson Research regarding motion. Soley/Hope	99
13037.001	03/13/2014	35	P	30	290.00	0.90	261.00	Estate of Mildred Johnson Begin review of motion regarding accounting. Soley/Hope	100
13037.001	03/14/2014	35	P	30	290.00	2.70	783.00	Estate of Mildred Johnson Continue review of motion regarding accounting; begin review of accounting. Soley/Hope	101
13037.001	03/17/2014	12	P	1	195.00	0.60	117.00	Estate of Mildred Johnson Conference with R. Merrill; locate and contact Snohomish County property managers to determine appropriate rate for management fees. Soley/Hope	102
13037.001	03/17/2014	35	P	30	290.00	4.10	1,189.00	Estate of Mildred Johnson Work on motion to remove personal representative. Soley/Hope	103
13037.001	03/17/2014	22	P	30	225.00	1.10	247.50	Estate of Mildred Johnson Review Personal Representative's Motion for Order Approving Interim Report and Accounting; legal research regarding conflict of interest for personal representatives. Soley/Hope	104
13037.001	03/18/2014	35	P	12	290.00	2.80	812.00	Estate of Mildred Johnson Review of personal representative's accounting; work on motion to remove. Soley/Hope	107
13037.001	03/19/2014	12	P	1	195.00	3.80	741.00	Estate of Mildred Johnson Review 2010 and 2011 P&Ls for Seven Js; draft Declaration of Hope Soley, review accounting; assemble exhibits; conference with R. Merrill regarding same; e-mails from and to property managers to determine going rate for management fees. Soley/Hope	105
13037.001	03/19/2014	35	P	30	290.00	2.90	841.00	Estate of Mildred Johnson Continue work on motion to remove and supporting documents. Soley/Hope Estate of Mildred Johnson	108
<b>Total for Fees</b>						<b>Billable</b>	<b>71.60</b>	<b>19,136.50</b>	
Expenses									
13037.001	12/27/2013	35	A	60			87.60	Photocopies Soley/Hope Estate of Mildred Johnson	ARCH
<b>Total for Expenses</b>						<b>Billable</b>	<b>0.00</b>	<b>87.60</b>	
Advances									
13037.001	12/31/2013	35	A	73			4.00	Legal Messenger Fee Soley/Hope Estate of Mildred Johnson	ARCH

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Date: 03/21/2014

Detail Transaction File List  
Hanson Baker Ludlow Drumheller P.S.

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Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
Advances								
13037.001	01/24/2014	35	A	41			42.25	Pierce County Clerk - documents Soley/Hope
								ARCH
13037.001	01/31/2014	35	A	73			75.00	Estate of Mildred Johnson Legal Messenger Fee
								ARCH
								Soley/Hope
13037.001	03/17/2014	35	P	41			5.50	Estate of Mildred Johnson Pierce County Court
								6
								Soley/Hope
								Estate of Mildred Johnson

Total for Advances					Billable	0.00	126.75	
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## GRAND TOTALS

Billable	71.60	19,350.85
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Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
13037.001	03/20/2014	35	A	30	290.00	7.20	2,088.00	Complete motion to remove, declaration of H. Soley and declaration of R. Merrill; telephone conference with H. Soley regarding declaration. Soley/Hope Estate of Mildred Johnson	ARCH	
13037.001	03/20/2014	22	A	30	225.00	3.60	810.00	Further research in support of Beneficiaries' Motion; start work on adding case law to support Beneficiaries' arguments in brief. Soley/Hope Estate of Mildred Johnson	ARCH	
13037.001	03/20/2014	5	A	4	335.00	0.80	268.00	Review and edit Motion to Remove Personal Representative. Soley/Hope Estate of Mildred Johnson	ARCH	
13037.001	03/21/2014	12	A	1	195.00	3.90	760.50	Review Motion, R. Merrill Declaration, H. Soley Declaration, Proposed Order; conference with R. Merrill re revisions; draft Note for Commissioner's Calendar; draft Declaration of Service; file all pleadings with Pierce County Superior Court; arrange for working copies to be delivered to L. Loo and I. McLeod, and to the Pierce County Ex Parte Department. Soley/Hope Estate of Mildred Johnson	ARCH	
13037.001	03/21/2014	35	A	30	290.00	4.20	1,218.00	Edits to motion for removal and supporting declaration of R. Merrill; finalize proposed order. Soley/Hope Estate of Mildred Johnson	ARCH	
13037.001	03/28/2014	26	A	5	150.00	0.20	30.00	Prepare hearing binders for April 11, 2014 hearing on Motion to Approving Accounting and Motion to Remove Personal Representative. Soley/Hope Estate of Mildred Johnson	ARCH	
13037.001	04/01/2014	35	P	30	290.00	5.50	1,595.00	Continue review of accounting; work on objection to accounting. Soley/Hope Estate of Mildred Johnson	116	
13037.001	04/02/2014	12	P	1	195.00	0.70	136.50	Conference with R. Merrill; review response. Soley/Hope Estate of Mildred Johnson	117	
13037.001	04/02/2014	5	P	4	335.00	0.40	134.00	Review and edit Response to Accounting. Soley/Hope Estate of Mildred Johnson	118	
13037.001	04/02/2014	35	P	30	290.00	5.00	1,450.00	Additional review of accounting issues; complete initial draft of objection to accounting. Soley/Hope Estate of Mildred Johnson	119	
13037.001	04/03/2014	35	P	30	290.00	3.10	899.00	Complete edits to objection to accounting and supporting documents; telephone conference with clients regarding same. Soley/Hope Estate of Mildred Johnson	121	
13037.001	04/04/2014	12	P	1	195.00	3.00	585.00	Conference with R. Merrill; prepare working copies for Pierce County Superior Court hearing on April 11, 2014; prepare Declaration of Service; file Beneficiaries' Response, Declaration of Service, and Proposed Order with court, arrange for delivery of court documents to Davies Pearson. Soley/Hope Estate of Mildred Johnson	120	
13037.001	04/04/2014	35	P	5	290.00	1.70	493.00	Prepare order denying accounting; telephone conference with clients. Soley/Hope Estate of Mildred Johnson	122	
13037.001	04/07/2014	35	P	30	290.00	0.50	145.00	E-mails to and from clients regarding status; review docket. Soley/Hope Estate of Mildred Johnson	124	
13037.001	04/08/2014	35	P	30	290.00	7.00	2,030.00	Review additional accounting materials and response brief from S. Johnson; begin drafting reply brief; telephone conference with clients regarding same; e-mails to clients regarding same.	125	

EXHIBIT B



Date: 04/15/2014

Detail Transaction File List  
Hanson Baker Ludlow Drumheller P.S.

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Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
								Soley/Hope Estate of Mildred Johnson	
13037.001	04/09/2014	12	P	1	195.00	1.10	214.50	Conference with R. Merrill; remote hearing for motion; prepare Beneficiaries' Response and R. Merrill Declaration for filing with court; prepare Declaration of Service; review pleadings per R. Merrill.	123
								Soley/Hope Estate of Mildred Johnson	
13037.001	04/09/2014	35	P	30	290.00	3.40	986.00	Continue review of new accounting document and response brief; edit reply brief; telephone conference with I. McLeod regarding continuance.	126
								Soley/Hope Estate of Mildred Johnson	
13037.001	04/10/2014	26	P	30	150.00	0.40	60.00	Update hearing binders.	127
								Soley/Hope Estate of Mildred Johnson	
13037.001	04/10/2014	35	P	11	290.00	1.40	406.00	Several telephone conferences with I. McLeod regarding continuance; telephone conference with clients regarding continuance; coordinate continuing hearing; telephone conference regarding working copies.	129
								Soley/Hope Estate of Mildred Johnson	
<b>Total for Fees</b>						Billable	53.10	14,308.50	
<b>Advances</b>									
13037.001	03/21/2014	35	A	41			12.00	Pierce County Clerk Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	03/24/2014	35	A	41			1.75	Pierce County Clerk Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	03/24/2014	35	A	41			2.25	Pierce County Clerk Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	04/02/2014	35	P	41			7.00	Kitsap County Clerk Soley/Hope Estate of Mildred Johnson	12
13037.001	04/04/2014	35	P	41			6.00	Pierce County Clerk Soley/Hope Estate of Mildred Johnson	13
<b>Total for Advances</b>						Billable	0.00	29.00	
<b>GRAND TOTALS</b>									
						Billable	53.10	14,337.50	

Date: 05/21/2014

Detail Transaction File List  
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	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
Fees									
	13037.001	04/14/2014	12	A	1	195.00	0.30	58.50 Telephone conference with court clerk at Pierce County Superior Court regarding paper and electronic working copies. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/14/2014	5	A	4	335.00	0.40	134.00 Review and edit Reply Brief. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/14/2014	35	A	30	290.00	1.60	464.00 Several telephone conferences with H. Soley regarding reply; edit reply brief. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/15/2014	26	A	30	150.00	0.20	30.00 E-file Beneficiaries' Reply and supporting documents online with Pierce County Superior Court. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/15/2014	35	A	30	290.00	1.90	551.00 Edit proposed order; review and respond to e-mails from H. Soley; coordinate filing. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/16/2014	12	A	1	195.00	0.50	97.50 Conferences with R. Merrill; schedule hearings with Probate Judge. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/16/2014	35	A	1	290.00	0.60	174.00 Telephone conference with court regarding continuance; telephone conference with clients regarding same; e-mail to I. McLeod regarding note hearing. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/18/2014	35	A	30	290.00	0.90	261.00 Work on oral argument outline. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/21/2014	35	A	30	290.00	1.30	377.00 Continued work on oral argument outline. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/22/2014	35	A	1	290.00	0.30	87.00 Telephone conference with Bailiff regarding working copies. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/23/2014	12	A	1	195.00	0.20	39.00 Call to Pierce County judge to confirm receipt of transferred working papers. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/25/2014	12	A	1	195.00	0.10	19.50 Conference with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/25/2014	35	A	30	290.00	1.30	377.00 Continue work on oral argument. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/28/2014	12	A	1	195.00	0.20	39.00 Confirm court hearing. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/28/2014	35	A	12	290.00	3.10	899.00 Review all documents in preparation for hearing; confirm hearing. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/29/2014	35	A	12	290.00	0.20	58.00 Review e-mail from H. Soley regarding Live Love Laugh; e-mail to I. McLeod regarding same. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	04/30/2014	35	A	30	290.00	3.80	1,102.00 Complete oral argument preparation; update orders regarding removal and accounting. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	05/02/2014	12	P	1	195.00	0.60	117.00 Conference with R. Merrill; research and locate special masters for examination for court purposes. Soley/Hope Estate of Mildred Johnson	146

EXHIBIT A

Wednesday, 05/21/2014 3:46 pm  
CP 001910

Date: 05/21/2014

Detail Transaction File List  
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Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
13037.001	05/02/2014	35	P	30	290.00	5.30	1,537.00	Travel to and attend hearing on motion to remove; conference with clients after hearing; begin special master research. Soley/Hope Estate of Mildred Johnson	151
13037.001	05/05/2014	22	P	30	225.00	4.30	967.50	Start work on follow up brief for the Court on issues related to an award of attorney fees and costs, including costs of special master, against personal representative personally, as opposed to the Estate. Soley/Hope Estate of Mildred Johnson	147
13037.001	05/05/2014	35	P	1	290.00	0.40	116.00	Telephone conference with JAMS regarding Commissioner Watness as special master. Soley/Hope Estate of Mildred Johnson	152
13037.001	05/05/2014	35	P	30	290.00	0.80	232.00	Begin preparing supplemental brief regarding May 16 hearing. Soley/Hope Estate of Mildred Johnson	153
13037.001	05/06/2014	22	P	30	225.00	4.10	922.50	Complete, proof and cite check portions of brief for hearing on issues of attorney and special master fees. Soley/Hope Estate of Mildred Johnson	148
13037.001	05/06/2014	35	P	30	290.00	1.20	348.00	Continue work on supplemental memo. Soley/Hope Estate of Mildred Johnson	154
13037.001	05/07/2014	35	P	30	290.00	2.70	783.00	Complete draft of supplemental memo for May 16 hearing. Soley/Hope Estate of Mildred Johnson	155
13037.001	05/08/2014	26	P	30	150.00	0.20	30.00	E-file Beneficiaries' Supplemental Memorandum with Pierce County Superior Court. Soley/Hope Estate of Mildred Johnson	149
13037.001	05/08/2014	5	P	4	335.00	0.30	100.50	Review and edit Memorandum. Soley/Hope Estate of Mildred Johnson	150
13037.001	05/08/2014	35	P	5	290.00	3.10	899.00	Prepare order denying accounting; edit supplemental memo; telephone conference with baliff regarding hearing date. Soley/Hope Estate of Mildred Johnson	156
13037.001	05/12/2014	35	P	30	290.00	2.10	609.00	Work on oral argument; review memo filed by S. Johnson; review correspondence from court. Soley/Hope Estate of Mildred Johnson	157
13037.001	05/15/2014	35	P	1	290.00	0.30	87.00	Telephone conference with JAMS regarding special master. Soley/Hope Estate of Mildred Johnson	158
13037.001	05/21/2014	12	P	1	195.00	2.00	390.00	Telephone conference with R. Merrill; review pleadings and response; locate court rulings. Soley/Hope Estate of Mildred Johnson	159
<b>Total for Fees</b>						<b>Billable</b>	<b>44.30</b>	<b>11,906.00</b>	
<b>Expenses</b>									
13037.001	04/15/2014	35	A	60			4.80	Photocopies Soley/Hope Estate of Mildred Johnson	ARCH
<b>Total for Expenses</b>						<b>Billable</b>	<b>0.00</b>	<b>4.80</b>	
<b>Advances</b>									
13037.001	04/15/2014	35	A	41			6.00	Pierce County Clerk Soley/Hope Estate of Mildred Johnson	ARCH
13037.001	05/08/2014	35	P	41			6.00	Pierce County Clerk Soley/Hope	20

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcd</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref #</u>
	13037.001	06/09/2014	5	A	4	335.00	0.30	100.50	Review and edit response brief. Soley/Hope Estate of Mildred Johnson	ARCH
	Subtotal for Timekeeper 5					Billable	0.30	100.50	Andree R. Chicha	
	13037.001	05/27/2014	12	A	1	195.00	7.00	1,365.00	Begin assembling and organizing information for Special Master. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	05/28/2014	12	A	1	195.00	6.00	1,170.00	Complete binders and Information for Commissioner Watness; arrange for delivery of same, email to M. Nemeth; conferences with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	05/30/2014	12	A	1	195.00	0.30	58.50	Conference with R. Merrill regarding status. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	05/30/2014	12	A	1	195.00	0.20	39.00	Conference with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/02/2014	12	A	1	195.00	0.50	97.50	Conference with R. Merrill; conference with T. Bergman. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/04/2014	12	A	1	195.00	0.60	117.00	Conferences with R. Merrill, update pleadings. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/06/2014	12	A	1	195.00	0.60	117.00	Conferences with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/09/2014	12	A	1	195.00	0.50	97.50	Review beneficiary response per R. Merrill; conference with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/11/2014	12	A	1	195.00	1.40	273.00	Review and revise Beneficiaries' Motion; draft Declaration of Service; prepare pleadings for filing with court; file documents with court, arrange for working copies, and email opposing counsel copies of same; conferences with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/12/2014	12	A	1	195.00	0.60	117.00	Review Reply; telephone conference with R. Merrill regarding hearing. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/13/2014	12	A	1	195.00	0.30	58.50	Telephone conference with R. Merrill regarding hearing. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/16/2014	12	A	1	195.00	0.10	19.50	Conference with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/23/2014	12	A	1	195.00	0.30	58.50	Conference with R. Merrill; review Confession of Judgment and emails regarding conference. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	06/27/2014	12	A	1	195.00	0.10	19.50	Conference with R. Merrill re: status. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	07/07/2014	12	A	1	205.00	1.00	205.00	Prepare documents for Commissioner Watness conference. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	07/09/2014	12	A	1	205.00	0.40	82.00	Status conference with R. Merrill. Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	07/11/2014	12	A	1	205.00	1.60	328.00	Conferences with R. Merrill; review binder for specific information; prepare memo to R. Merrill; email binder copies to clients.	ARCH

EXHIBIT C

Date: 09/24/2014

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Hanson Baker Ludlow Drumheller P.S.

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<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcd</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/14/2014	12	A	1	205.00	2.50	512.50 Conferences with R. Merrill; assist in document preparation concerning bank records.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/16/2014	12	A	1	205.00	3.20	656.00 Work on spreadsheet creation per R. Merrill; update correspondence.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/18/2014	12	A	1	205.00	5.00	1,025.00 Continue preparing Exhibit D to commissioner's advance letter; telephone conference with R. Merrill; telephone conference with H. Soley.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/21/2014	12	A	1	205.00	1.20	246.00 Conferences with R. Merrill; prepare transmission to clients of S & G Johnson documents received;	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/23/2014	12	A	1	205.00	1.10	225.50 Conference with R. Merrill; conference with J. Ludlow; review records; prepare Declaration of Service; email from and to H. Soley	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/25/2014	12	A	1	205.00	1.10	225.50 Conference with R. Merrill; assist with production of letter to Commissioner Watness; emails to group.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/28/2014	12	A	1	205.00	0.20	41.00 Review client emails.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/15/2014	12	A	1	205.00	1.30	266.50 Conference with R. Merrill; prepare and send scans of replacement and new notebooks to clients.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/18/2014	12	A	1	205.00	0.10	20.50 Conference with R. Merrill.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/20/2014	12	A	1	205.00	2.50	512.50 Conferences with R. Merrill; review revised binders 12, 13, and 14; participate in JAMS conference call.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/25/2014	12	A	1	205.00	0.80	164.00 Telephone conference with R. Merrill; review and mail letter to I. McLeod; update binders.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/27/2014	12	A	1	205.00	0.50	102.50 Conferences with R. Merrill; proof and transmit letter to Commissioner E. Watness;	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	09/15/2014	12	P	1	205.00	0.40	82.00 Conference with R. Merrill.	264
								Soley/Hope Estate of Mildred Johnson	
	13037.001	09/22/2014	12	P	1	205.00	0.80	164.00 Review Motion to Confirm Special Master's Report; conference with R. Merrill.	268
								Soley/Hope Estate of Mildred Johnson	
								Subtotal for Timekeeper 12	
						Billable	42.20	8,466.00 Stacey Rudee	
	13037.001	06/04/2014	22	A	30	225.00	3.20	720.00 Research for Response to Personal Representative's Motion for Reconsideration; work on proportionality argument for response brief.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/17/2014	22	A	30	225.00	0.20	45.00 Start work on research for possible claims against manager of LLC.	ARCH

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CP 002088

<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcd</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/18/2014	22	A	30	225.00	1.60	360.00 Research possible claims against S. Johnson for mismanagement of LLC in preparation for drafting complaint.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/23/2014	22	A	30	225.00	0.20	45.00 Complete research regarding possible claims against S. Johnson as manager of LLC.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/10/2014	22	A	30	225.00	1.90	427.50 Start review of KeyBank statements for Estate and spreadsheet of transactions that require further investigation.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/11/2014	22	A	30	225.00	0.90	202.50 Continue review of Estate's KeyBank Statements and spreadsheet of suspicious transfers.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/14/2014	22	A	30	225.00	1.90	427.50 Complete review of Estate's KeyBank Statements and spreadsheet of transfers that require further investigation; complete review of Seven J's Union Bank statements; email to R. Merrill with summary of findings for Seven J bank accounts.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	Subtotal for Timekeeper 22					Billable	9.90	2,227.50 Scott P. Beetham	
	13037.001	06/11/2014	26	A	5	150.00	0.30	45.00 Prepare Hearing Binder for June 13, 2014 Motion for Reconsideration.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/12/2014	26	A	30	150.00	0.50	75.00 Download Chase Bank statements received from client and save to zip file for e-mailing to opposing counsel.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	Subtotal for Timekeeper 26					Billable	0.80	120.00 Theresa M. Bergman	
	13037.001	05/27/2014	35	A	30	290.00	0.60	174.00 E-mails to clients regarding plan; review pleadings regarding document production.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	05/28/2014	35	A	3	290.00	1.60	464.00 Prepare correspondence to Commissioner Watness regarding case and documents; e-mails with Commissioner Watness' office; review files to be delivered to Commissioner Watness.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	05/29/2014	35	A	30	290.00	0.80	232.00 Several e-mails with special master's office regarding documents; e-mails to and from I. McLeod.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	05/30/2014	35	A	12	290.00	2.60	754.00 Review motion for reconsideration; review and respond to numerous e-mails regarding motion to stay.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/02/2014	35	A	12	290.00	3.60	1,044.00 Review motion to stay and e-mail to clients regarding same; telephone call to court regarding telephone appearance; work on response to motion for reconsideration; edit and sign stipulation regarding payment of special master.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/03/2014	35	A	8	290.00	1.30	377.00 Research regarding reconsideration standard; work on response brief; emails to and from clients.	ARCH

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Detail Transaction File List  
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<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcd</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/04/2014	35	A	30	290.00	1.90	551.00 Work on response brief; review cited case law.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/05/2014	35	A	30	290.00	2.10	609.00 Continue drafting response brief.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/06/2014	35	A	30	290.00	3.10	899.00 Complete initial draft of response brief; e-mail to clients regarding same.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/09/2014	35	A	30	290.00	3.90	1,131.00 Edit response to motion for reconsideration; draft order denying reconsideration; draft supporting declaration; e-mails with clients.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/10/2014	35	A	30	290.00	4.70	1,363.00 Complete response brief and order; begin reviewing bank statements provided by S. Johnson.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/11/2014	35	A	30	290.00	2.60	754.00 Continue review of bank statements; finalize pleadings for filing.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/12/2014	35	A	5	290.00	2.80	812.00 Prepare for hearing regarding reconsideration.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/13/2014	35	A	30	290.00	5.20	1,508.00 Travel to and attend hearing to obtain Order Denying Reconsideration; review 2012 bank statements for Seven Js provided today.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/16/2014	35	A	1	290.00	0.60	174.00 Telephone conference with H. Soley regarding strategy and bank record issues; e-mails to clients regarding same.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/17/2014	35	A	30	290.00	0.90	261.00 E-mails regarding upcoming meeting; review entered order.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/19/2014	35	A	30	290.00	4.40	1,276.00 Travel to and attend meeting with Special Master regarding procedures; e-mail to clients regarding same; prepare correspondence regarding source accounts.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	06/24/2014	35	A	12	290.00	0.40	116.00 Review and respond to e-mails regarding meeting date; telephone conference with H. Soley.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/03/2014	35	A	5	290.00	1.30	377.00 Prepare for meeting with Special Master; e-mails to clients.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/07/2014	35	A	5	290.00	0.20	58.00 Prepare for meeting with Special Master.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/08/2014	35	A	30	290.00	6.90	2,001.00 Travel to and attend meeting with clients and Special Master; follow-up meeting with clients.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/09/2014	35	A	30	290.00	1.90	551.00 Begin review of recently provided Johnson documents.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/10/2014	35	A	30	290.00	0.90	261.00 Begin drafting letter to special master regarding questionable payments.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/11/2014	35	A	1	290.00	0.20	58.00 Work on letter to Special Master.	ARCH

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<u>Fees</u>	<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcd</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref #</u>
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/14/2014	35	A	1	290.00	4.10	1,189.00 Review statements provided by S. Johnson regarding questionable transactions; prepare spreadsheets.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/15/2014	35	A	1	290.00	5.10	1,479.00 Complete review of bank statements provided by S. Johnson; draft letter to E. Watness regarding same,	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/21/2014	35	A	5	290.00	2.40	696.00 Prepare agenda and questions for meeting with Special Master.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/22/2014	35	A	30	290.00	8.20	2,378.00 Meeting in Seattle with clients, L. Loo, S. Sanders and Special Master.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/24/2014	35	A	11	290.00	1.90	551.00 Several telephone conferences with potential forensic accountants; begin drafting letter regarding accountants and tax returns.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	07/25/2014	35	A	30	290.00	0.80	232.00 Finalize letter to Special Master regarding tax returns and accountant nominations.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/01/2014	35	A	12	290.00	1.50	435.00 Review correspondence and quickbooks from T. Rodda; review correspondence from I. McLeod; telephone conference with H. Soley.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/04/2014	35	A	1	290.00	1.40	406.00 Telephone conference with H. Soley regarding G. Johnson position; e-mail to clients regarding D. Murphy issue and status.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/05/2014	35	A	30	290.00	0.20	58.00 E-mails regarding special master investigation.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/14/2014	35	A	12	290.00	0.70	203.00 Review C. Johnson comments; continue review of new documents from S. Johnson.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/15/2014	35	A	1	290.00	0.70	203.00 Telephone conference with H. Soley regarding status; e-mail to clients regarding meeting.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/18/2014	35	A	12	290.00	0.80	232.00 Review e-mails regarding status; review new documents from S. Johnson.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/19/2014	35	A	30	290.00	1.60	464.00 Begin review of letter and enclosures from I. McLeod.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/20/2014	35	A	30	290.00	2.20	638.00 Continued review of I. McLeod letter and enclosures; conference call with special master.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/21/2014	35	A	5	290.00	2.10	609.00 Prepare for conference with clients; review Special Master notes regarding timing; draft letter to I. McLeod; draft stipulation.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	08/22/2014	35	A	2	290.00	3.20	928.00 Conference with clients regarding status; edit letter and stipulation regarding distributions; review Special Master report.	ARCH



Date: 09/24/2014

Detail Transaction File List  
Hanson Baker Ludlow Drumheller P.S.

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	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
Fees										
	13037.001	08/25/2014	35	A	30	290.00	2.90	841.00	Soley/Hope Estate of Mildred Johnson Complete review of interim report; telephone conference with C. Johnson regarding distributions; telephone conference with H. Soley regarding report; begin drafting letter to Special Master regarding report issues.	ARCH
	13037.001	08/26/2014	35	A	30	290.00	0.60	174.00	Soley/Hope Estate of Mildred Johnson Edit letter to Special Master regarding interim report clarification.	ARCH
	13037.001	08/27/2014	35	A	30	290.00	0.80	232.00	Soley/Hope Estate of Mildred Johnson Finalize letter to Special Master; review letter from I. McLeod.	ARCH
	13037.001	09/05/2014	35	P	30	290.00	0.40	116.00	Soley/Hope Estate of Mildred Johnson E-mails regarding Note for Hearing with Special Master; review and respond to e-mails regarding status.	260
	13037.001	09/09/2014	35	P	30	290.00	0.30	87.00	Soley/Hope Estate of Mildred Johnson E-mail to M. Nemeth regarding status; e-mails to clients regarding same.	261
	13037.001	09/11/2014	35	P	30	290.00	0.70	203.00	Soley/Hope Estate of Mildred Johnson E-mails to clients regarding status and plan moving forward.	262
	13037.001	09/12/2014	35	P	12	290.00	1.40	406.00	Soley/Hope Estate of Mildred Johnson Review Special Master report; telephone conference with clients regarding same.	263
	13037.001	09/15/2014	35	P	30	290.00	1.50	435.00	Soley/Hope Estate of Mildred Johnson Complete review of interim report; begin work on motion for order confirming report.	265
	13037.001	09/17/2014	35	P	30	290.00	1.60	464.00	Soley/Hope Estate of Mildred Johnson Work on motion to confirm Special Master report.	266
	13037.001	09/19/2014	35	P	30	290.00	2.90	841.00	Soley/Hope Estate of Mildred Johnson Work on motion to adopt Special Master report.	267
	13037.001	09/22/2014	35	P	30	290.00	2.10	609.00	Soley/Hope Estate of Mildred Johnson Complete initial draft of motion.	269
	13037.001	09/23/2014	35	P	30	290.00	3.90	1,131.00	Soley/Hope Estate of Mildred Johnson Work on order regarding report.	270
									Soley/Hope Estate of Mildred Johnson	
	Subtotal for Timekeeper 35					Billable	110.50	32,045.00	Rachel L. Merrill	
Total for Fees						Billable	163.70	42,959.00		
Expenses										
	13037.001	05/27/2014	35	A	60			290.00	Photocopies Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	07/07/2014	35	A	60			83.40	Photocopies Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	07/07/2014	35	A	60			150.00	Photocopies Soley/Hope Estate of Mildred Johnson	ARCH
	13037.001	07/18/2014	35	A	60			6.40	Photocopies Soley/Hope Estate of Mildred Johnson	ARCH

Wednesday 09/24/2014 1:54 pm

CP 002092

Date: 09/24/2014

Detail Transaction File List  
Hanson Baker Ludlow Drumheller P.S.

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Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
Expenses								
Subtotal for Timekeeper 35					Billable	0.00	529.80	Rachel L. Merrill
Total for Expenses					Billable	0.00	529.80	
Advances								
13037.001	05/30/2014	35	A	73		72.00	Legal Messenger Fee Soley/Hope	ARCH
13037.001	08/19/2014	35	A	41		18.00	Estate of Mildred Johnson Pierce County Clerk Soley/Hope Estate of Mildred Johnson	ARCH
Subtotal for Timekeeper 35					Billable	0.00	90.00	Rachel L. Merrill
Total for Advances					Billable	0.00	90.00	
GRAND TOTALS								
					Billable	163.70	43,578.80	

Wednesday 09/24/2014 1:54 pm

CP 002093

Date: 12/15/2014

Detail Transaction File List  
Hanson Baker Ludlow Drumheller P.S.

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Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/14/2014	35	A	12	290.00	0.70	203.00	Review C. Johnson comments; continue review of new documents from S. Johnson.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/15/2014	12	A	1	205.00	1.30	266.50	Conference with R. Merrill; prepare and send scans of replacement and new notebooks to clients.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/15/2014	35	A	1	290.00	0.70	203.00	Telephone conference with H. Soley regarding status; e-mail to clients regarding meeting.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/18/2014	12	A	1	205.00	0.10	20.50	Conference with R. Merrill.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/18/2014	35	A	12	290.00	0.80	232.00	Review e-mails regarding status; review new documents from S. Johnson.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/19/2014	35	A	30	290.00	1.60	464.00	Begin review of letter and enclosures from I. McLeod.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/20/2014	12	A	1	205.00	2.50	512.50	Conferences with R. Merrill; review revised binders 12, 13, and 14; participate in JAMS conference call.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/20/2014	35	A	30	290.00	2.20	638.00	Continued review of I. McLeod letter and enclosures; conference call with special master.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/21/2014	35	A	5	290.00	2.10	609.00	Prepare for conference with clients; review Special Master notes regarding timing; draft letter to I. McLeod; draft stipulation.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/22/2014	35	A	2	290.00	3.20	928.00	Conference with clients regarding status; edit letter and stipulation regarding distributions; review Special Master report.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/25/2014	12	A	1	205.00	0.80	164.00	Telephone conference with R. Merrill; review and mail letter to I. McLeod; update binders.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/25/2014	35	A	30	290.00	2.90	841.00	Complete review of interim report; telephone conference with C. Johnson regarding distributions; telephone conference with H. Soley regarding report; begin drafting letter to Special Master regarding report issues.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/26/2014	35	A	30	290.00	0.60	174.00	Edit letter to Special Master regarding interim report clarification.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/27/2014	12	A	1	205.00	0.50	102.50	Conferences with R. Merrill; proof and transmit letter to Commissioner E. Watness;	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	08/27/2014	35	A	30	290.00	0.80	232.00	Finalize letter to Special Master; review letter from I. McLeod.	ARCH
								Soley/Hope Estate of Mildred Johnson	
13037.001	09/05/2014	35	A	30	290.00	0.40	116.00	E-mails regarding Note for Hearing with Special Master; review and respond to e-mails regarding status.	ARCH
								Soley/Hope	

Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
	13037.001	09/09/2014	35	A	30	290.00	0.30	87.00	ARCH
								Estate of Mildred Johnson E-mail to M. Nemeth regarding status; e-mails to clients regarding same. Soley/Hope	
	13037.001	09/10/2014	35	A	30	290.00	0.90	261.00	ARCH
								Estate of Mildred Johnson Work on declaration for entry of judgment. Soley/Hope	
	13037.001	09/11/2014	35	A	30	290.00	0.70	203.00	ARCH
								Estate of Mildred Johnson E-mails to clients regarding status and plan moving forward. Soley/Hope	
	13037.001	09/12/2014	35	A	12	290.00	1.40	406.00	ARCH
								Estate of Mildred Johnson Review Special Master report; telephone conference with clients regarding same. Soley/Hope	
	13037.001	09/15/2014	12	A	1	205.00	0.40	82.00	ARCH
								Estate of Mildred Johnson Conference with R. Merrill. Soley/Hope	
	13037.001	09/15/2014	35	A	30	290.00	1.50	435.00	ARCH
								Estate of Mildred Johnson Complete review of interim report; begin work on motion for order confirming report. Soley/Hope	
	13037.001	09/17/2014	35	A	30	290.00	1.60	464.00	ARCH
								Estate of Mildred Johnson Work on motion to confirm Special Master report. Soley/Hope	
	13037.001	09/19/2014	35	A	30	290.00	2.90	841.00	ARCH
								Estate of Mildred Johnson Work on motion to adopt Special Master report. Soley/Hope	
	13037.001	09/22/2014	12	A	1	205.00	0.80	164.00	ARCH
								Estate of Mildred Johnson Review Motion to Confirm Special Master's Report; conference with R. Merrill. Soley/Hope	
	13037.001	09/22/2014	35	A	30	290.00	2.10	609.00	ARCH
								Estate of Mildred Johnson Complete initial draft of motion. Soley/Hope	
	13037.001	09/23/2014	35	A	30	290.00	3.90	1,131.00	ARCH
								Estate of Mildred Johnson Work on order regarding report. Soley/Hope	
	13037.001	09/24/2014	12	A	1	205.00	0.40	82.00	ARCH
								Estate of Mildred Johnson Conference with R. Merrill. Soley/Hope	
	13037.001	09/24/2014	35	A	30	290.00	2.10	609.00	ARCH
								Estate of Mildred Johnson Draft declaration of fees and proposed judgments. Soley/Hope	
	13037.001	09/25/2014	35	A	30	290.00	3.40	986.00	ARCH
								Estate of Mildred Johnson Edit and finalize order, declaration and judgments; telephone conference with M. Nemeth regarding interim report hearing. Soley/Hope	
	13037.001	09/25/2014	26	A	30	150.00	0.40	60.00	ARCH
								Estate of Mildred Johnson E-file Motion to Confirm Special Master Report online with Pierce County Superior Court. Soley/Hope	
	13037.001	09/26/2014	12	A	1	205.00	0.60	123.00	ARCH
								Estate of Mildred Johnson Conference with R. Merrill; file working copies with Pierce County Superior Court. Soley/Hope	
	13037.001	09/26/2014	35	A	9	290.00	2.50	725.00	ARCH
								Estate of Mildred Johnson Review correspondence from I. McLeod and attached documents; review working copies; review R. Merrill time logs regarding reconsideration fees. Soley/Hope	
	13037.001	09/29/2014	12	A	1	205.00	0.30	61.50	ARCH
								Estate of Mildred Johnson Conference with R. Merrill regarding status; check docket to confirm working copies sent to judge. Soley/Hope	
	13037.001	09/29/2014	35	A	30	290.00	1.80	522.00	ARCH
								Estate of Mildred Johnson E-mail to M. Nemeth; edit request for fees.	

Fees	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
								Soley/Hope Estate of Mildred Johnson	
	13037.001	09/30/2014	35	A	30	290.00	1.90	551.00 Work on argument and updated declaration.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	09/30/2014	26	A	5	150.00	0.20	30.00 Prepare hearing binder.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/01/2014	12	A	1	205.00	0.80	164.00 Conference with R. Merrill; review R. Merrill's response for recording with Pierce County Superior Court.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/01/2014	35	A	30	290.00	4.00	1,160.00 Work on reply brief; review S. Johnson response; e-mails to clients.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/02/2014	12	A	1	205.00	1.40	287.00 Review Reply, Declaration, Proposed Judgment and Proposed Order; file all with Pierce County Superior Court; prepare and file Declaration of Service; conference with R. Merrill.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/02/2014	35	A	30	290.00	3.40	986.00 Finalize reply brief; prepare for hearing; e-mails to clients.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/03/2014	35	A	30	290.00	6.10	1,769.00 Prepare for hearing; attend hearing regarding Special Master report and judgment; e-mail to Special Master regarding same.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/08/2014	12	A	1	205.00	0.30	61.50 Review Commissioner Watness' report.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/08/2014	35	A	12	290.00	0.70	203.00 Review Special Master Report regarding reconsideration.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/10/2014	35	A	12	290.00	0.30	87.00 Review and respond to e-mails.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/13/2014	35	A	12	290.00	0.80	232.00 Review and respond to e-mails; work on updated motion.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/17/2014	35	A	30	290.00	1.10	319.00 Work on motion regarding Special Master report and to remove personal representative.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/20/2014	12	A	1	205.00	0.50	102.50 Conference with R. Merrill; review beneficiaries' motion.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/20/2014	35	A	30	290.00	1.30	377.00 Continue work on motion documents.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/21/2014	35	A	30	290.00	1.60	464.00 Work on motion regarding Special Master report and removal.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/23/2014	12	A	1	205.00	1.00	205.00 Conference with R. Merrill; schedule court hearing; file documents with court and send notice to all pertinent recipients; draft declaration of mailing.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/23/2014	35	A	30	290.00	4.00	1,160.00 Complete motion, declaration and order.	ARCH
								Soley/Hope Estate of Mildred Johnson	
	13037.001	10/27/2014	35	A	30	290.00	1.20	348.00 E-mails regarding continuance; review and respond to client e-mails; re-note hearing.	ARCH
								Soley/Hope	